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THE LICENSING ACT, 1904.

THE STANDARD WORK.

**PATERSON'S LICENSING
ACTS, 1828 TO 1904.**

Sixteenth Edition.

BY

WILLIAM W. MACKENZIE, M.A.,
Barrister at Law; Editor of "Pratt's Highways."

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Liquor & Liquor Licensing

THE

LICENSING ACT, 1904.

(4 EDW. 7, c. 23.)

WITH

Full Explanatory Notes, an Introduction,
and an Appendix.

BY

WILLIAM W. MACKENZIE, M.A.,

BARRISTER-AT-LAW.

Editor of "Paterson's Licensing Acts," Eleventh to Fifteenth Editions, etc.

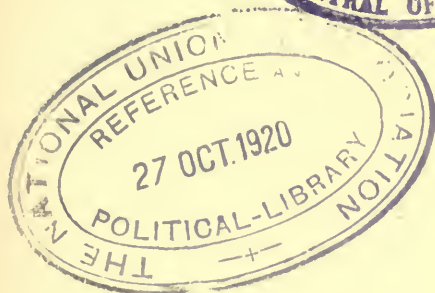
Printed and Published by
BUTTERWORTH & CO., 12, BELL YARD, TEMPLE BAR, W.C.
and SHAW & SONS, 7 & 8, FETTER LANE, E.C.

LONDON:

BUTTERWORTH & CO., | SHAW & SONS,
12, BELL YARD, TEMPLE BAR, W.C. | 7 & 8, FETTER LANE, E.C.

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PREFACE.

THE importance of the Licensing Act, 1904, can scarcely be overstated, and the changes which it has introduced are far reaching.

An endeavour has been made in the following pages to show how far the existing law has been altered by the new Act, and to supply some notes which may be of use to those concerned in the administration of the Act.

The new Act amends the law in respect to the extinction of on licenses and the grant of new licenses, and makes some alterations as to transfers. In the Appendix will be found the various Statutory Provisions still in force in respect to the grant of new licenses, renewals, and transfers, and the holding of

Brewster Sessions and Special Transfer Sessions. In this little book, therefore, will be found all the Statutory Provisions now in force relating to the grants of new licenses, renewals, and transfers, and the Sessions at which the business in respect thereto may be transacted.

W. M.

9, KING'S BENCH WALK,
TEMPLE,
August, 1904.

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(4 EDW. 7. c. 23.)

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LICENSING ACT, 1904.

INTRODUCTION.

7 THE Licensing Act, 1904, comes into operation on January 1st, 1905. It amends the law "in respect to the extinction of licenses and the grant of new licenses."

Under the law prior to this Act the renewal of existing licenses and the grant of new licenses primarily rested with the justices of the licensing district in a county and the justices of the borough in a borough. In the case of boroughs where there are less than ten justices, special provision is made for a certain number of county justices acting with borough justices in respect of new licenses.

Renewals.—Under the law prior to this Act the existing licenses were (provided application was made for renewal) renewed as a matter of course unless notice of objection to the renewal was given. The question of renewal of licenses came before the licensing justices at their annual meeting, commonly called brewster sessions, held in February or some time in March (Licensing Act, 1902, s. 14, *post*). If objection was taken to the renewal of the license, the justices had an absolute discretion (a discretion which, however, had to be exercised judicially: *Sharp v. Wakefield*, [1891] A. C. 173; 55 J. P. 197; 60 L. J. M. C.

73 ; 64 L. T. 180 ; 37 W. R. 187) to refuse or grant the renewal of a license, subject to an appeal to quarter sessions in case the renewal was refused. The appeal to quarter sessions was an appeal both on facts and law, and amounted to a complete rehearing of the case (*Whiffin v. Malling or Bligh*, [1892] 1 Q. B. 362 ; 56 J. P. 325 ; 66 L. T. 333 ; 40 W. R. 292 ; 61 L. J. M. C. 82 ; *Evans v. Conway JJ.*, [1900] 2 Q. B. 224 ; 69 L. J. Q. B. 636 ; 64 J. P. 467 ; 48 W. R. 577 ; 82 L. T. 703 ; 16 T. L. R. 425). The justices, therefore, had exactly the same power to extinguish licenses whether on the ground of the misconduct or unfitness of the license-holder or condition of the licensed premises, or whether the reason for the extinction was unconnected either with the conduct or unfitness of the license-holder or with the condition of the premises.

The great change made by the new Act is that it restricts the power of licensing justices to refuse to renew an existing on license to four grounds, namely :

1. That the licensed premises have been ill-conducted ;
2. That the premises are structurally deficient or structurally unsuitable ;
3. That the character or fitness of the proposed holder of the license is unsatisfactory ;
4. That the renewal would be void ;

while in all other cases the licensing justices can only report the question of refusing to renew to quarter sessions, and quarter sessions cannot refuse to renew except on payment of compensation (Licensing Act, 1904, s. 1).

The compensation is not compensation provided by the State, but is compensation provided by the trade itself ; that is to say, the trade are obliged under the Act to bring themselves under the mutual insurance scheme set

up by the Act (*ibid.*, s. 3). The main outlines of the insurance scheme are the establishment for each county of a compensation fund, contributions to which are levied over the licensed premises in the area ; if a license is extinguished in a county under circumstances which entitle the persons interested in the premises to the payment of compensation, the compensation is provided out of the compensation fund of the county. Inasmuch as the county is taken as the compensation area, the Act gives to quarter sessions the final decision as to the cases in which compensation is to be paid (*ibid.*, s. 1 (2)), but quarter sessions will not be able to take away any license or to give compensation except in cases which are reported to them for the purpose by the justices of the licensing district.

The procedure before licensing justices as to objecting to the renewal of on licenses and hearing objections—whether the ground of objection is or is not one which, if successful, would entitle the parties interested in the licensed premises to compensation—will be the same as at present. Notice of objection must be given to the licensed person, and the evidence tendered must be given on oath, and the other formalities prescribed by s. 42 of the Licensing Act, 1872, and s. 26 of the Licensing Act, 1874, must be observed.

The effect of the Act is that the parties interested in the license may still come before quarter sessions if the renewal is refused. But there is this distinction : In the case of the justices of the licensing district refusing to renew the license on any of the grounds mentioned on p. 2, *ante*, the question may come before quarter sessions in the shape of an appeal under the Alehouse Act, 1828, s. 27. In the other case, that is

where they think that the renewal of the license should be refused on some other ground, as, for example, redundancy, the question comes before quarter sessions in the shape of a report from the licensing justices that they think that the case is one for the extinction of the license with compensation.

In the former case the question is decided judicially by quarter sessions with reference to the special case before them (*Whiffin v. Malling* or *Bligh, supra*; *Evans v. Conway JJ., supra*; *Raven v. Southampton JJ.*, [1904] 1 K. B. ; 68 J. P. 68). In the latter case the question is partly administrative and partly judicial. It must primarily be decided by quarter sessions or, more correctly speaking, their committee (see s. 5 (2)) administratively as a question affecting the whole county having regard to all the reports made to them by the licensing justices in the county, and to the amount of money available for compensation.

Quarter sessions must delegate their power of "determining any question as to the refusal of the renewal of a license under this Act and matters consequential thereon" to a committee (Licensing Act, 1904, s. 5 (2)), and this committee will, first of all, consider all the reports of the licensing justices of the county. They will then make up their minds having regard to the compensation available and to the general interests of the county, how far they will act on those reports. Up to this point it seems clear that the proceeding will be administrative and not judicial, and that so far there is no necessity for any opportunity being given to hear any persons judicially, the power to consult with the licensing justices and to obtain information privately from such persons as the chief constable or residents in the neighbourhood being amply sufficient.

If the committee eventually resolve on the reduction of certain licenses, the hearing of persons interested in the licensed premises, or (if need be) in the question of the renewal of the license including the licensing justices, as to the taking away of an individual license will no doubt be more or less in the nature of a judicial hearing. This hearing will, it seems, be before the committee.

The amount of compensation is the difference between the premises with the license and the premises without a license (including a sum for the depreciation of trade fixtures arising by reason of the refusal to renew the license); and the amount may be agreed between the parties interested in the licensed premises and approved by quarter sessions, or failing such agreement and approval shall be paid by the Commissioners of Inland Revenue, subject to an appeal to the High Court (s. 2).

Ante-1869 licenses.—The Act brings the *ante-1869* beerhouses under the control of the justices. Under the law prior to this Act the justices could only take away these licenses on one or more of the four grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869 (see note (*i*) to s. 9, *post*, p. 48), and had not the same discretion to take them away on any other grounds as they had with regard to other licenses. This Act enables justices to deal with *ante-1869* beerhouses in exactly the same way as they can deal with other licensed premises. Compensation in the case of the *ante-1869* licenses will be higher than that given in the case of other licensed premises in order to recognise their superior parliamentary title.

New licenses.—Under the law prior to this Act new licenses are granted in a county by the justices of the

licensing division, and confirmed by the committee called the county licensing committee ; that is, a committee consisting of not less than three and not more than twelve justices appointed by the Quarter Sessions (Licensing Act, 1872, s. 37). There was no appeal either against the grant of a new license or against the refusal to grant a new license. The confirmation by the county licensing committee takes the place of the appeal. The new Act makes practically no alteration as regards the authority who grant, or the authority who confirm, a new license, beyond substituting a committee appointed by the quarter sessions under s. 5 (2) for the county licensing committee appointed under s. 37 of the Licensing Act, 1872.

The Act considerably extends the existing power of justices as regards new licenses. Under the law prior to this Act, the only question before the justices was whether the license should be granted or not. The justices could not attach any conditions to the grant of a new license which would have any legal sanction (*R. v. Bowman*, [1898] 1 Q. B. 663 ; 67 J. P. 374 ; 67 L. J. Q. B. 463 ; 78 L. T. 230 ; 14 T. L. R. 303 ; *R. v. Exeter JJ.* ; *R. v. Mann* (1873), 42 L. J. M. C. 35 ; 37 J. P. 212 ; L. R. 8 Q. B. 235 ; 27 L. T. 847 ; 21 W. R. 329). Under this Act the justices, on the grant of a new on license may attach to the grant of such license such conditions both as to payments to be made and the tenure of the license, and as to any other matters, as they think proper in the interests of the public ; they are also obliged to secure to the public as far as they can the monopoly value of the license (s. 4 (2)). The justices are also given power, if they think right, to grant not merely the annual license which they grant under the existing law, but a license which will, subject to the good conduct of the license-

holder and of the premises, continue for a fixed term not exceeding seven years, that is to say, they can practically grant a lease of the license (s. 4 (3) (5)).

The object of the Act as regards new on licenses appears to be to enable such experiments to be made in each locality as the authority granting such licenses think proper; and also to ensure that it should be impossible for the future that any property in the on license should grow up which would at all fetter the free treatment of the license in such a manner as the authority having control over such license think right in the existing circumstances.

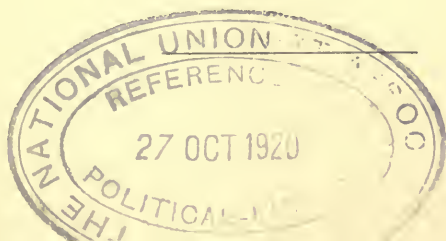
In boroughs no alteration is made as to the body granting or confirming a grant of new licenses.

County boroughs.—The Act applies to a county borough as though it were a county with the substitution of the whole body of justices acting in and for the borough for quarter sessions (s. 8 (2)); and the city of London, for the purposes of the Act, is to be deemed a county borough (s. 8 (3)). The whole body of licensing justices will thus be the Authority who will receive reports as to licenses that may be taken away on the ground of redundancy or other similar cause on payment of compensation; and they will also have the control of the compensation fund. They will exercise their powers as to the renewal of licenses through the borough licensing committee, appointed under s. 38 of the Licensing Act, 1872 (s. 5 (4)). An alteration is made in the number of members of such committee. Formerly it consisted of not less than three nor more than seven; now it is to consist of not less than seven, the maximum number being such number as the whole

body of justices acting in and for the borough determine (s. 5 (4)).

Off licenses.—The discretion of the licensing justices as to the renewals of off licenses is not interfered with by the Act, and where the renewal of any such license is refused on the ground of redundancy or any other similar ground, or, indeed, on any ground whatever, no compensation is payable. The holders of such licenses are not liable to contribute to the compensation fund. It will be recollected, of course, that persons who held off licenses for wine, spirits, liqueurs, sweets, or cider on June 25th, 1902, cannot be refused a renewal of such licenses except on one or more of the four grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869 (see note (i) to s. 9, *post*, p. 48), or for misconduct in the management of their business (Licensing Act, 1902, s. 10 (4)).

Act coming into operation.—As already stated, the Act comes into operation on January 1st, 1905. But it is competent for quarter sessions or justices of county boroughs and the city of London or any other Authority under the Act to exercise any power before January 1st so far as may be necessary or expedient for the purpose of bringing the Act into operation on that day (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 37). No instrument, however, made under such power will come into operation until the Act itself comes into operation (*ibid.*).



LICENSING ACT, 1904.

(4 EDW. 7, c. 23.)

An Act to amend the Licensing Acts, 1828 to 1902, in respect to the extinction of Licenses and the grant of new Licenses.
[15th August 1904.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Reference to quarter sessions of questions as to renewal of licenses in certain cases.*] (1) The power to refuse the renewal of an existing on license (*a*), on any ground other than the ground that the licensed premises (*b*) have been ill-conducted (*c*) or are structurally deficient or structurally unsuitable (*d*), or grounds connected with the character or fitness of the proposed holder of the license (*e*), or the ground that the renewal would be void (*f*), shall be vested in quarter sessions (*g*) instead of the justices of the licensing district (*h*), but shall only be exercised on a reference from those justices (*i*), and on payment of compensation in accordance with this Act (*k*).

In every case of the refusal of the renewal of an existing on license (*a*) by the justices of a licensing district (*h*), they shall specify in writing to the applicant the grounds of their refusal (*l*).

(2) Where the justices of a licensing district on the consideration by them, in accordance with the Licensing

Sect. 1. Acts, 1828 to 1902 (*m*), of applications for the renewal of licenses (*n*) are of opinion that the question of the renewal of any particular existing on licenses (*a*) requires consideration on grounds other than those on which the renewal of an existing on license can be refused by them (*o*), they shall refer the matter to quarter sessions (*p*), together with their report thereon (*q*), and quarter sessions (*p*) shall consider all reports so made to them (*r*), and may, if they think it expedient, after giving the persons interested (*s*) in the licensed premises (*b*), and, unless it appears to quarter sessions unnecessary, any other persons appearing to them to be interested in the question of the renewal of the license of those premises (including the justices of the licensing district), an opportunity of being heard (*t*), and subject to the payment of compensation (*u*) under this Act, refuse the renewal of any license to which any such report relates.

(*a*) The expression "on license" means a license for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises; and the expression "existing on license" means a license in force at the date of the passing of this Act, and includes a license granted by way of renewal from time to time of a license so in force whether such license continues to be held by the same person or has been or may be transferred to any other person or persons. See s. 9, *post*.

The licensing justices will have full discretion to grant or refuse the renewal of new on licenses granted after the passing of this Act. This sub-section only restricts their discretion in respect to existing on licenses. "Leased" licenses do not require renewal. See s. 4 (3), *post*.

Off licenses are not included in the Act, except so far as the Act relates to confirmation. They are not subject to compensation if the renewal is refused. This is probably due to the fact that these off licenses are in nearly every case attached to other businesses, and it would, therefore, be difficult to assess the contributions that they should pay to the compensation fund. The same observation applies to a license for wine alone or sweets alone, which are excluded from the definition of an on license *supra*.

(*b*) "Licensed premises" means premises in respect of which a license, as defined by the Licensing Act, 1872, has been granted and is in force; and a "license," as defined by the Licensing Act, 1872,

means a license for the sale of intoxicating liquors granted by justices in pursuance of the Alehouse Act, 1828 (9 Geo. 4, c. 61), including a certificate of justices granted under the Wine and Beerhouse Acts, and including a license for the sale of sweets, and a license for the retail of spirits granted to a wholesale spirit dealer by justices (Licensing Act, 1872, s. 74). **Sect. 1.**
NOTE (b).

(c) Examples of misconduct are given in s. 9 (2), *post*, viz., persistent and unreasonable refusal to supply suitable refreshment (other than intoxicating liquor) at a reasonable price, and failure to fulfil any reasonable undertaking given to the justices on the grant or renewal of the license.

If the house is of a disorderly character or is frequented by thieves, prostitutes or persons of bad character, this will be evidence that the premises have been ill-conducted (*cf.* Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 8 (2)). Evidence of convictions against previous occupiers of the house, although the character of the present holder is good, is evidence that the house is of a disorderly character (*R. v. Miskin Higher JJ.*, [1893] 1 Q. B. 275; 57 J. P. 263; 67 L. T. 680; 41 W. R. 252; 5 R. 121).

Where evidence had been given to establish and had failed to establish a charge against the licensee of suffering gaming contrary to the Act, it was held that this evidence could be called again on the renewal to show that the house was of a disorderly character notwithstanding the acquittal, because it was offered for an entirely different purpose (*Latimer v. Birmingham JJ.* (1896), 60 J. P. 660 *n*). Where at a transfer sessions the applicant applied for and obtained a transfer, notwithstanding that evidence was given to show the house was of a disorderly character, it was held that the evidence could be again given on the renewal, and the justices acting upon it might refuse to renew (*Smith v. Shann*, [1898] 2 Q. B. 347; 62 J. P. 354; 67 L. J. Q. B. 819; 77 L. T. 77; 14 T. L. R. 414).

(d) This ground enables the licensing justices in their discretion to refuse the renewal of an on license other than that of an *ante*-1869 beerhouse, where the premises are structurally deficient or structurally unsuitable. To come within this ground the structure itself must either be deficient or unsuitable.

It is provided by the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 45, that premises licensed for the first time subsequently to 1872, "shall be, in the opinion of the licensing authority, structurally adapted to the class of license for which a certificate is sought: Provided that no house, not licensed at the time of the passing of this Act for the sale of any intoxicating liquor for consumption on the premises shall be qualified to have a license attached thereto authorising such sale, unless such house shall contain, exclusive of the rooms occupied by the inmates of such house, if the license authorise the sale of spirits, two rooms, and if the license do not authorise the sale of spirits, one room, for the accommodation of the public."

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— Prior to the Licensing Act, 1872, there was no statutory provision regulating the structure of the premises licensed or about to be licensed, although the Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 1, introduced a certain value qualification in respect of beerhouses. See also Wine and Beerhouse Act, 1870, s. 11; Licensing Act, 1872, ss. 45, 46, 47. As to wine and sweets *on*, see Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 8.

NOTE (d). Dilapidated premises requiring structural repair as distinct from decorative repair would be a good ground of refusal under this sub-section. A structural defect in the drains would constitute structural deficiency (*cf. Gebhart v. Saunders*, [1892] 2 Q. B. 452; 67 L. T. 684; 56 J. P. 741; 40 W. R. 571; *Kinson Pottery Co. v. Mayor of Poole*, [1899] 2 Q. B. 421; 68 L. J. Q. B. 819; 81 L. T. 24; 47 W. R. 607; 66 J. P. 580). The absence of whitewash or papering would not render the premises structurally deficient or structurally unsuitable, for "whitewashing and papering are in the nature of ornament" (BAYLEY, J., in *Wise v. Metcalfe* (1829), 10 B. & C. 316); and absence of cleansing would not necessarily render premises structurally deficient. (*Cf. Barnett v. Laskey* (1898), 68 L. J. Q. B. 55; *Fulham Vestry v. Solomon*, [1896] 1 Q. B. 198; 65 L. J. M. C. 33; 60 J. P. 72; 12 T. L. R. 157.)

By s. 11 (4) of the Licensing Act, 1902 (2 Edw. 7, c. 28), licensing justices may on renewing any license, direct such alterations as they think reasonably necessary to secure the proper conduct of the business, should be made in that part of the premises where intoxicating liquor is sold or consumed. And it was held in *Bushell v. Hammond* (1904), 64 J. P. 370, that the power to direct alterations was not confined to that part of the premises where intoxicating liquor was actually sold or consumed, but included the means of access thereto, and that justices had power to order the back entrance to premises to be closed. It would seem to follow, therefore, that if the means of access to licensed premises are not satisfactory, such premises may be deemed structurally unsuitable within this section.

Unsuitability of site would not come within the ground of "structurally unsuitable."

(e) The expression "proposed holder" means the person applying for the renewal in his own name. He may be the holder of the existing license, or he may be a person in occupation of the premises to whom it is proposed to renew the license. *Cf. BRETTE, M.R.*, in *R. v. Liverpool JJ.* (1883), 11 Q. B. D. 644; *Symons v. Wedmore*, [1894] 1 Q. B. 401; 63 L. J. M. C. 44; 69 L. T. 801; 58 J. P. 197; 42 W. R. 301.

The conviction of the proposed holder affects his character for the purpose of the Licensing Acts (*R. v. Birmingham JJ.* (1876), 40 J. P. 132). Whether one conviction will bring the case within the scope of this sub-section will depend on the nature of the conviction. In *R. v. Lancashire JJ.* (1891), 55 J. P. 580, Lord ESHER, M.R., said (p. 582): "A good character for many years ought not

to be destroyed by one such slip as this " (that is, keeping open during prohibited hours). A person may have a good character but be unfit to carry on the business of publican at the premises in question, and if the justices are satisfied as to his unfitness, they may refuse to renew without being under any obligation to award compensation. In *R. v. Lancashire JJ.*, *supra*, which was the case of an *ante*-1869 beerhouse, it was held that quarter sessions had exceeded their jurisdiction under the Wine and Beerhouse Act, 1869, ss. 8 and 19, when they acted not on the character of the applicant but on the question of whether he was a proper person to keep a beerhouse in Manchester. This decision still holds good in the case of an *ante*-1869 beerhouse; but in the case of a fully-licensed house it is still competent for the justices to refuse to renew either on the ground of the bad character of the applicant, or of his unfitness to hold the license in question.

Sect. 1.
NOTE (e).

(f) A license granted to a person who had previously been convicted of felony, although no one but himself was aware of the felony, and a formal transfer had been subsequently obtained regularly by a third person, was held void in the hands of such third person (*R. v. Vine* (1875), L. R. 10 Q. B. 195; 39 J. P. 213; 44 L. J. M. C. 60; 31 L. T. 842; 23 W. R. 649). But if the convicted felon has received a free pardon, this wipes out the disqualification as though it had never existed (*Hay v. Tower JJ.* (1890), 24 Q. B. D. 561; 59 L. J. M. C. 79; 54 J. P. 500; 62 L. T. 290; 38 W. R. 414). If a license is forfeited on conviction for using licensed premises as a brothel, it is void from that moment for all purposes (*R. v. West Riding JJ.* (1888), 21 Q. B. D. 258; 52 J. P. 455; 57 L. J. M. C. 103; 36 W. R. 855; Licensing Act, 1872, s. 15). And so is the license of a beerhouse keeper convicted of selling spirits without a license (*Tower JJ. v. Chambers* (1904), 20 T. L. R. 784). To renew a license in the name of a dead man would be void, for "a license to a dead man is a *mère nullity*" (*Cowles v. Gale* (1871), L. R. 7 Ch. 12; 41 L. J. Ch. 14; 25 L. T. 524; 20 W. R. 70). Where the parties, the justices, and the Excise all acted on the notion that an enactment was unrepealed and a license was granted, the court held it void, notwithstanding the mistake (*Pearson v. Broadbent* (1872), 36 J. P. 485).

Persons may be disqualified for holding a license as being a sheriff's officer (Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 16; Beerhouse Act, 1830 (1 Will. 4, c. 62), s. 2); as not being the resident holder and occupier of a beerhouse (Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 1); as being a person convicted after August 7th, 1840, of felony or of selling spirits without license disqualified from selling beer and cider by retail (Beerhouse Act, 1840, s. 7; *R. v. Roper* (1894), 58 J. P. 512); or convicted after June 14th, 1860, of like offences disqualified from selling wine by retail (Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 22; *R. v. Roper, supra*); person making use of forged certificate disqualified from obtaining a license for the sale

Sect. 1. of beer, cider, or wine by retail (Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 11); person convicted of felony disqualified
NOTE (f). from selling spirits by retail (Wine and Beerhouse Act, 1870 (33 & 34 Vict. c. 29), s. 14); person selling intoxicating liquor without license may be disqualified on second conviction for a term not exceeding five years, or on third or subsequent conviction for a term of years or for life (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3); person convicted of permitting premises to be a brothel (*ibid.*, s. 15). Licensee may be deprived for two years under 34 & 35 Vict. c. 112, s. 10, for second offence for harbouring thieves, or reputed thieves, or permitting them to meet in the house or allowing deposit of stolen goods; and like period for a second offence for refusing to admit, or not admitting, constable into refreshment house under Refreshment Houses Act, 1860, s. 18. See further, Licensing Act, 1872, s. 44.

If the premises were of insufficient value where required to be of a certain value by the Licensing Acts (see note (d), *supra*), the justices would be justified in refusing to renew on this ground.

(g) "Quarter sessions" is defined in s. 9 (4), *post*, p. 44. In county boroughs and in the City of London the whole body of justices acting in and for the borough or city exercise the power here vested in quarter sessions (s. 8 (2), (3), *post*, p. 42) on a report from the borough licensing committee. Section 5 (4), *post*, p. 38.

(h) "Licensing district" means the area for which a general annual licensing meeting is held in pursuance of the Alehouse Act, 1828 (Licensing Act, 1872, s. 74). The justices of the licensing district are the justices not disqualified under the Licensing Act, 1872, s. 60, or by bias (*R. v. Gee* (1901), 17 T. L. R. 374).

Before this Act came into operation the power to renew or to refuse to renew all licenses was vested in the licensing justices subject to an appeal to the quarter sessions for the county in the case of a refusal. Licensing justices had the same power to refuse a renewal (except in the case of an *ante*-1869 beerhouse) as they had to grant a new license (COCKBURN, C.J., in *R. v. Smith* or *Smith v. Hereford* (1878), 42 J. P. 295; 48 L. J. M. C. 38; 39 L. T. 606), that is to say, they had an absolute discretion. They could refuse, for example, on the ground that the house was too far from police supervision and was not wanted in the neighbourhood (*Sharp v. Wakefield*, [1891] A. C. 173; 55 J. P. 197; 60 L. J. M. C. 73; 64 L. T. 180; 37 W. R. 187), or on the ground that there were too many licensed houses in the neighbourhood (*R. v. Howard* or *Farnham JJ.*, [1902] 2 K. B. 363; 71 L. J. K. B. 754; 66 J. P. 579; 51 W. R. 21; 86 L. T. 839; 18 T. L. R. 690). This power is still vested in the licensing justices so far as the refusal is concerned where the ground of refusal is that (1) the premises have been ill-conducted, or (2) are structurally deficient or structurally unsuitable, or (3) the character or fitness of the proposed holder of the license is unsatisfactory, or (4) that the renewal would be void, as set out in

sub-s. (1) and in notes (c), (d), (e), and (f), *supra*. In all other cases the power to refuse to renew can only be exercised by quarter sessions on a reference from the justices of the licensing district in which the licensed premises are situate and on payment of compensation. **Sect. 1.**
NOTE (h).

The power to refuse to renew and the duty to pay compensation are not confined solely to cases of redundancy, but apply to all cases where the refusal is not the result of any fault of the license-holder or the structure of his premises, that is to say, on any ground other than (1), (2), (3), or (4), *supra*.

The Act does not interfere with the discretion except so far as is necessary for the purpose of carrying out the compensation scheme. In order to make the compensation scheme work it was necessary to take a large area like the county to work upon; and in this case it is obvious that the persons who decide whether compensation is to be given or not out of the compensation fund must be the persons representing the whole area and not persons representing only some part of the area. In one sense the interference with the discretion is purely nominal, inasmuch as under the system in force at the passing of this Act an appeal to quarter sessions lay from a refusal by the licensing justices. In this Act the licensing justices, instead of refusing to renew a license and then being possibly overruled by quarter sessions, will recommend the non-renewal of the license to quarter sessions, and leave it to quarter sessions or their committee to deal with. It will be noticed that quarter sessions cannot take away a license on the ground of redundancy or other similar ground unless it is recommended by the licensing justices.

(i) As to the reference from licensing justices, see sub-s. (2) of this section.

(k) The payment of compensation is regulated by s. 2, *post*.

(l) The justices are not bound to deliver to the applicant in writing their reason for refusing to renew the license unless they are asked to do so.

The words of this part of the sub-section are similar to those used in s. 8 of the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), which requires the justices in certain cases to "specify in writing to the applicant the ground of their decision"; and in *R. v. Cumberland JJ.* (1881), 8 Q. B. D. 369; 46 J. P. 7; 51 L. J. Q. B. 142; 30 W. R. 178, where the justices had retired to consider the application, and determined to refuse it on the ground that the premises were not qualified according to law (that being one of the cases in which they were bound to specify in writing to the applicant the grounds of their decision), and thereupon their clerk drew up a minute in writing to the effect that the justices refused the application on the ground that they were not satisfied the value of the house was sufficient to qualify it according to law, and on their return the chairman read out that minute

Sect. 1. in the presence of the applicant, the court held that the justices had sufficiently complied with the statute. FIELD, J., said (8 Q. B. D., p. 571): "It is difficult to see what more the justices could have done." CAVE, J., said (*ibid.* p. 372): "The statute requires the justices to specify in writing the ground of their decision to the applicant. That is for his benefit, so that he may know on what the decision is founded. If they had been asked for a copy of the minute and had not given it, they might have been held to have contravened the Act, but I do not think they are bound to force a copy on the applicant in order to comply with the statute."

NOTE (l).

The justices must state the grounds of their refusal at the time of refusing the application, and if they neglect or refuse to do so a *mandamus* will lie to compel them to hear and confine themselves to the grounds mentioned in the sub-section (*Ex parte Smith, R. v. Surrey or Chertsey JJ.* (1878), 3 Q. B. D. 374; 47 L. J. M. C. 104; 42 J. P. 598; 26 W. R. 682, following *R. v. Sylkes* (1878), 1 Q. B. D. 52; 45 L. J. M. C. 39; 40 J. P. 39; 33 L. T. 566; 24 W. R. 141; *Tranter v. Lancashire JJ.* (1887), 51 J. P. 454; *R. v. Lancashire JJ.* (1891), 54 J. P. 580; 64 L. T. 562). If, however, the justices omit to state the grounds, and the applicant appeals to quarter sessions against the refusal, quarter sessions may rightly hear the appeal on the merits (*Ex parte Gorman*, [1894] A. C. 23; 63 L. J. M. C. 84; 58 J. P. 316; 70 L. T. 46).

In *R. v. Smith or Southport JJ.* (1873), L. R. 8 Q. B. 146; 37 J. P. 214; 28 L. T. 129; 21 W. R. 382, where the justices refused a new off-beer license on other grounds than those prescribed by s. 8 of the Wine and Beerhouse Act, 1869, and there was power to appeal, the court refused a *mandamus* on the ground that the applicant might have appealed to quarter sessions.

(m) As to the Acts included in the expression Licensing Acts, 1828 to 1902, see note (a) to s. 10, *post*.

In consequence of these words, "in accordance with the Licensing Acts, 1828 to 1902," it will be necessary, where it is intended to object to any license on any ground for which compensation is payable if the license is refused, that is to say, on any ground other than those mentioned in sub-s. (1), *supra*, that notice of objection should be served on the holder of the license, pursuant to s. 42 of the Licensing Act, 1872, and s. 26 of the Licensing Act, 1874 (see ss. 42 and 26 in Appendix). Written notice of an intention to oppose a renewal, stating in general terms the grounds of opposition, must be served on the holder of the license "not less than seven days before the commencement of the general annual licensing meeting"; or if this is not done, but objection is made at the annual meeting, the justices may "adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day when the case will be heard and the objection considered as if such notice had been given" (Licensing Act, 1872, s. 42; Licensing Act, 1874, s. 26). The evidence must

be given on oath (Licensing Act, 1872, s. 42). If no notice to attend is given, the license-holder need not attend in person at the annual meeting (*ibid.*), but he must make an application for a renewal. Sect. 1.
NOTE (m).

The same procedure will be followed at the annual licensing meeting as before the passing of this Act, except that the justices, instead of refusing a renewal on the ground of redundancy or any similar ground, will report the case to quarter sessions. Licensing justices should have satisfactory evidence before them affecting the licenses against the renewal of which they report (*cf. R. v. Howard or Farnham JJ., supra*). A map showing the locality and no other evidence is unsatisfactory (*cf. Raven v. Southampton JJ., [1904] 1 K. B. 430*).

Where justices report against the renewal of a license they have power to provisionally renew it (see s. 6 (a)). Such provisional renewal will continue in force until quarter sessions, or, in the case of county boroughs, the whole body of licensing justices determine that the license shall be taken away or not.

(n) Applications for renewal are heard at the general annual meeting or at some adjournment thereof. The general annual licensing meeting is held within the first fourteen days of the month of February, and every adjournment thereof within one month of the date of such meeting (Licensing Act, 1902, s. 14). No fresh application for renewal can be made after the expiration of one month from the date of the annual meeting (*R. v. Bristol JJ. (1903), 67 J. P. 375 ; 19 T. L. R. 596*).

(o) These grounds are the grounds mentioned in sub-s. (1), *supra*.

(p) "Quarter sessions" is defined in s. 9 (4), *post*, and see note (g), *supra*. In county boroughs, the matter will be referred to the whole body of justices meeting in and for the borough, see s. 8 (2), *post*, on a report from the borough licensing committee, s. 5 (4), *post*. As to the city of London, see s. 8 (3), *post*.

The Secretary of State may make rules regulating the procedure of quarter sessions on the consideration of the reports of justices, and on any hearing under this Act with reference to the refusal of all licenses, and for the consultation with these justices as to their reports, etc., see s. 6, *post*.

(q) Quarter sessions are not required under the Act to submit any report received by them from licensing justices to persons interested in the licensed premises.

(r) Quarter sessions, or rather the committee of quarter sessions (see s. 5 (2), *post*), will consider all the reports of the justices of the licensing district in their county as a whole, and decide what is to be done having regard to the amount of compensation available. When so acting, the question must primarily be decided by quarter sessions administratively as a question affecting the whole county, having regard to all the reports made to them by the licensing

Sect. 1. justices of the county, and to the amount of money available for compensation. When the committee of quarter sessions, having considered the whole question, have resolved on the reduction of certain licenses, the hearing of objections made by persons interested in a certain license against the extinction of that license, will no doubt be more or less in the nature of a judicial hearing.

NOTE (r).

(s) The "persons interested" are—the holder of the license, the owner, any mortgagee, and generally any persons having an interest in the premises. The "owner of licensed premises" is defined as "the person for the time being entitled to receive, either on his own account or as mortgagee or other encumbrancer in possession, the rackrent of such premises" (Licensing Act, 1872, s. 74). By s. 29 of the Licensing Act, 1874, "any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises: Provided, that when such estate or interest is vested in two or more persons jointly, one only of such persons shall be registered as representing such estate or interest."

Quarter sessions, or, more correctly, their committee (see s. 5 (2), *post*) will decide who are the "persons interested" in the premises. All who are interested will be entitled to be heard, and to come in and share the compensation awarded. The persons must be interested in the premises, and not merely in the business.

(t) If on consideration of a report from the justices of the licensing districts, the committee of quarter sessions (see s. 5 (2), *post*) decide that certain licenses should be refused, they will hear the persons interested in these licenses, and also any person interested in the non-renewal of the license, including the licensing justices, and decide finally upon the matter. It is left to the option of the quarter sessions, or rather their committee, whether to hear persons interested in the question of the renewal or refusal of the license and the licensing justices. There is good reason for this, as it is quite possible that the persons interested in the licensed premises may not oppose the refusal to renew the license with compensation. Where the licensing justices appear, their costs may be allowed under s. 3 (5), *post*.

The report of the licensing justices will form a *prima facie* case for the non-renewal of the license, and, unless it appears to quarter sessions unnecessary, any person locally interested in the non-renewal can appear either personally or by counsel and conduct the case against the license, including the licensing justices.

Rules regulating the procedure of quarter sessions on the consideration of the reports of justices, and on any hearing with reference to the refusal of the renewals of on licenses may be made by the Secretary of State under s. 6, *post*.

In the case of an appeal to quarter sessions against a refusal to renew or transfer a license, the only proper respondents to such an appeal are the licensing justices. If any other person appears to oppose such an appeal, he can only be heard by permission of the Bench (*Tynemouth Corporation v. Attorney-General*, [1899] A. C. 293; 68 L. J. Q. B. 752; 63 J. P. 404; 15 T. L. R. 370). But as already pointed out in the case of a reference to quarter sessions under this Act, any person appearing to quarter sessions to be interested in the question of renewal or transfer, including the licensing justices, is entitled to be heard unless it appears to quarter sessions unnecessary.

Sect. 1.

NOTE (t).

(u) As to payment of compensation on non-renewal, see s. 2, *post*. The inquiry before quarter sessions will not be as to the amount of compensation to be awarded, but only as to whether or not the license should be refused.

2. *Payment of compensation on non-renewal of license.*]

(1) Where quarter sessions (*a*) refuse the renewal of an existing on license (*b*) under this Act (*c*), a sum equal to the difference between the value of the licensed premises (calculated as if the license were subject to the same conditions of renewal as were applicable immediately before the passing of this Act (*d*), and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the license), and the value which those premises would bear if they were not licensed premises, shall be paid as compensation (*e*) to the persons interested (*f*) in the licensed premises.

(2) The amount to be so paid shall, if an amount is agreed upon by the persons appearing to quarter sessions to be interested (*g*) in the licensed premises and is approved by quarter sessions, be that amount (*h*), and in default of such agreement and approval shall be determined by the Commissioners of Inland Revenue in the same manner and subject to the like appeal to the High Court (*i*) as on the valuation of an estate for the purpose of estate duty (*k*), and in any event the amount shall be divided amongst the persons interested in the licensed premises (including the

Sect. 2. holder of the license) (*g*) in such shares as may be determined by quarter sessions :

Provided that in the case of the license-holder regard shall be had not only to his legal interest in the premises or trade fixtures but also to his conduct and to the length of time during which he has been the holder of the license, and the holder of a license, if a tenant, shall (notwithstanding any agreement to the contrary) (*h*) in no case receive a less amount than he would be entitled to as tenant from year to year, of the licensed premises (*m*).

(3) If on the division of the amount to be paid as compensation any question arises which quarter sessions consider can be more conveniently determined by the county court, they may refer that question to the county court in accordance with rules (*n*) of court to be made for the purpose.

(4) Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the commissioners, be paid out of the amount to be paid as compensation (*o*).

(*a*) "Quarter sessions" is defined in s. 9 (4), *post*. As to licensing justices in county boroughs and in the city of London, exercising the powers of quarter sessions, see s. 8 (2), (3).

(*b*) "Existing on license" is defined in s. 9 (4), *post*.

(*c*) Quarter sessions or the justices of a county borough may refuse a renewal under this Act where a report has been made to them under s. 1 by the justices of the licensing district or the borough licensing committee as the case may be. This section does not apply where quarter sessions are hearing an appeal from the refusal by licensing justices of the renewal on any of the grounds mentioned in s. 1 (1), of this Act.

(*d*) This Act was passed on August 15th, 1904.

(*e*) The compensation awarded under this Act is to be assessed, as the difference between the value of the premises when capable of being used as licensed premises, and the value of the premises when

made incapable of being so used by the license being taken away. In the value of the premises when capable of being used as licensed premises must be included the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the license. The compensation is for loss of property including such depreciation of trade fixtures, and personal considerations do not enter into consideration. The Act proceeds on the lines that the extinction of the license does not disqualify the person from following his trade, but does disqualify the premises from being used for certain purposes for which they must obviously be fitted, and thus reduces the value of the property in which money has been invested on the faith that it could be used for the particular business in question without arbitrary interference. One special qualification is introduced, viz., that the value of the premises as licensed premises must be calculated in such a way as to exclude any possible alteration in value which might be the result of a change in the law affected by this Act. This is the object of the words "calculated as if the license was subject to the same conditions of renewal as were applicable immediately before the passing of this Act."

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NOTE (e).

In ascertaining the value, so as to fix the amount of compensation, two matters should be considered, viz. : (1) The effect of the alteration in the law as to the discretion of the justices ; and (2) the effect of the introduction of what might be called a compulsory insurance system. The consideration of the first should, in the case of an ordinary license, involve little or no alteration in value. Under the law before the present Act, the licensing justices had an absolute discretion as to the renewal of licenses (other than *ante*-1869 beer-houses), a discretion, however, which was to be exercised in a judicial manner (*Sharpe v. Wakefield*, [1891] A. C. 173 ; 55 J. P. 197 ; 60 L. J. M. C. 73 ; 64 L. T. 180 ; 37 W. R. 187), and which was subject to revision by quarter sessions. Under this Act, quarter sessions, or in the case of county boroughs and the city of London, the whole body of licensing justices, will have an absolute discretion as to any license on which the licensing justices (or licensing committee, as the case may be) will make a report subject to the amount available for compensation. As far as the alteration of authority is concerned, the position from the point of view of the risk to the license will probably be the same in the future as it was before the Act. The limit of the compensation money might be said to be in favour of the license-holder's position. On the other hand, this advantage may fairly be said to be balanced by the fact that the right to compensation makes it easier to take away the license in a case where hardship would be great if compensation were not available. In the case of an ordinary license, therefore, the change made by this Act in respect to the powers of justices, may practically be disregarded.

The position as regards *ante*-1869 beerhouses is different. Under the Act, the justices will have the same discretion with regard to

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these licenses, as they have with regard to ordinary licenses ; while, under the law prior to this Act, the justices could only deal with these licenses on the four grounds mentioned in the Wine and Beer-house Act, 1869, that is to say, on the basis of misconduct, or of value. It is clear, therefore, that in the case of *ante*-1869 beerhouses, the consideration of the difference between the powers of the justices under this Act, and their powers under the law prior to this Act coming into operation, will involve a considerable addition to the value of the licensed premises.

In connection with the second matter, viz., the consideration of the effect which the right to compensation has on the value of the premises, there are really two points to be considered : Firstly, whether the amount of insurance charge is large or small in proportion to the risk ; and, secondly, how far the fact that the risk has to be compulsorily, instead of voluntarily, insured, adds to the value of the property. On the first point, the value would be in no way affected by the provisions of this Act as to compensation, if the amount of charge is exactly commensurate with the risk. On the second point, it is very difficult to decide whether, to take an analagous case, a man would give a larger price for a house which he was compelled to insure, than he would for a house on which insurance was optional. At any rate, a very small percentage either one way or the other would cover the difference in price which would be the result of the provisions of this Act as to compensation.

Apart from any special consideration of the changes in law affected by this Act, the two values to be ascertained will be determined according to the ordinary principles of valuation. The valuation of premises not capable of being used as licensed premises does not involve any special consideration. The valuation of premises when used as licensed premises does, no doubt, involve special and difficult considerations ; but this is a valuation which, after all, often has to be made in practice. One thing must be remembered, that there can be no rule of thumb deduction for the value of the license as compared with the value of the property without the license, that is to say, for the difference between the value of the premises as licensed premises and the value of the premises without the license, inasmuch as the value of the property without the license depends entirely on how far the property is useful for other purposes, a matter which varies in every case.

In making a valuation it is sometimes convenient to ascertain what prices have been realised on sales of the property in question, or of similar property similarly situated in the neighbourhood ; but in the case of public-house property this is scarcely ever practicable, and in any case care should be taken to ascertain that the amount given at any actual sales which are taken as a guide to the value, has not been affected by any special circumstances, or by any undue inflation or depreciation of value.

If there are no actual sales which can be taken as a guide to the value of the premises, that value can be fixed by taking some

number of years' purchase of the yearly value, and the same considerations may be applied for this purpose which are applicable to the ascertainment of the rateable value for the purpose of the poor rate. The rules that determine the annual rateable value of licensed premises are now made fairly clear by the decisions of the Courts. The effect of those decisions is that you have to find out how much the tenant would give for the house. The rent actually paid is the natural criterion (BLACKBURN, J., in *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B., p. 96). But in the case of licensed premises there are very few cases in which it can be so taken. The great majority of licensed premises are tied houses, and in the case of tied houses the amount which a man pays as rent depends, not so much on the value of the premises as on the nature of the contract entered into between him and the brewer (*Sunderland Overseers v. Sunderland Union* (1865), 18 C. B. (N.S.) 531; 34 L. J. M. C. 121; 30 L. T. 239. See also *Allison v. Monkwearmouth Shore Overseers* (1854), 4 E. & B. 13; 23 L. J. M. C. 177).

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The next criterion to be considered is whether you can judge of the value of the house from a comparison with what is given by free tenants of actual houses similarly situated to the one in question (*Dodds v. South Shields Union Assessment Committee*, [1895] 2 Q. B. 64; L. J. M. C. 508; 59 J. P. 452; 72 L. T. 645; 43 W. R. 532; 14 R. 422; *Clarke v. Fisherton Angar* (1880), 6 Q. B. D. 139; 50 L. J. M. C. 33; 29 W. R. 334; 45 J. P. 358). But this is not a criterion which actual facts always allow. Nor can the actual amount of profits made be taken in all cases as a criterion of value, inasmuch as the amount of profits depends not only on the value of the premises, but also on personal considerations (BLACKBURN, J., in *Mersey Docks v. Liverpool*, *supra*; *Cartwright v. Sculcoates Union*, [1900] A. C. 150; 64 J. P. 229; 69 L. J. Q. B. 403; 48 W. R. 394; 82 L. T. 157).

In the majority of cases, therefore, you have to find out what the tenant is likely to give for the house from the actual circumstances of the house itself, and the best evidence which can be given of this is the amount of business which the tenant of the house is actually doing (*Cartwright v. Sculcoates Union*, *supra*). This being ascertained, what may be called the personal element has to be eliminated, and for that purpose any special circumstances connected with the tenant which are either detracting from or adding to the amount of business done by the house must be considered, and the proper deduction or addition made.

In this way the normal amount of business which is capable of being done by the house may be ascertained, and having ascertained it, it is not difficult to fix the amount which the tenant would give for the house. When this amount has been fixed, the fixing of the capital value is a matter of applying a certain number of years' purchase. This number of years' purchase ought to be uniform in most cases if regard is paid to the proper principles in fixing the amount which the tenant would give for the house.

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Some general results, therefore, seem to follow. In the first place, the amount of compensation will not be commensurate with the amount of profits made from a house for two reasons: (1) The amount of profits may depend on personal and accidental considerations which do not affect the value of the licensed premises; (2) The house may be just as valuable for some other purpose as it is for licensed premises, and, in that case, the loss to the persons interested in the premises is very small. For instance, the compensation payable in the case of a house not doing a very large trade, but quite useless for other purposes, would possibly be larger than the compensation payable in the case of a house doing considerable trade, but so situated as to command a high rent for other purposes besides a public-house.

Another result which follows from the basis of compensation laid down is that the risk of a house having its license taken away for redundancy or any other ground than the grounds mentioned in s. 1 (1), must be taken into consideration in estimating the value. This is the effect of the words "calculated as if the license was subject to the same conditions of renewal as were applicable immediately before the passing of this Act." It is clear that the risk of a license being taken away is a consideration which should have been considered by any person investing his money in licensed premises, and it follows that the amount of compensation payable in respect of a house in the case of which there was considerable risk of the license being taken away would not be the same as that payable in the case of a house where the risk of the license being taken away was not so apparent.

(f) As to the "persons interested in the licensed premises," see note (s) to s. 1 (2), *supra*.

(g) The persons interested in the licensed premises, and who are to share in the compensation, are the persons "appearing" to quarter sessions to be interested. Quarter sessions, or rather their committee (see s. 5 (2), *post*), will thus have to determine who are interested. See, further, note (s) to s. 1 (2), *supra*.

(h) Quarter sessions have no power to fix the amount, but if an amount is agreed upon by the persons interested in the premises, quarter sessions, or rather the committee of quarter sessions (see s. 5 (2)), may approve that amount. In default of such agreement and approval, the amount shall be determined by the Commissioners of Inland Revenue. In simple cases the committee of quarter sessions may easily satisfy themselves that the amount agreed upon is not excessive, but where the case is at all complicated, or where the committee cannot be satisfied without employing valuers, etc., recourse must in practice be had to the Inland Revenue Commissioners.

(i) This provision for an appeal to the High Court would seem to exclude an appeal to the county court in cases where the amount

involved does not exceed £10,000, as provided by the Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10 (5). **Sect. 2.**

(k) As to the basis of valuation, see note (e), *supra*.

NOTE (i).

The section only brings in estate duty so far as it directs the commissioners in determining the amount of compensation on that basis to determine in the same manner and with the like appeal as on the valuation of an estate for the purposes of estate duty. This, of course, does not incorporate the practice of commissioners, such as it was in the valuation of licensed property. It only brings in their general practice in estimating, not a license, but an estate generally for the purpose of an estate duty; that is to say, they will follow their ordinary procedure, which they have to follow under the Finance Act, 1894. The effect is, that the procedure will be administrative, and not judicial; and this would appear to be the main object of bringing the commissioners in as the persons who are to determine the value. The Act avoids the necessity of any arbitrations or strictly judicial proceedings in the early stages of the assessment of compensation. If judicial proceedings become necessary, opportunity is afforded for them by the appeal to the High Court. The appeal from the assessment by the Inland Revenue Commissioners of compensation, will be the same as an appeal from the assessment of estate duty. This is governed by s. 10 of the Finance Act, 1894. It is an appeal on the whole question, not merely on the question of law, and the High Court would have power themselves to fix the amount of compensation, and to substitute the amount so fixed for that fixed by the commissioners.

By s. 10 of the Finance Act, 1894 (57 & 58 Vict. c. 30), (1) "any person aggrieved by the decision of the commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security . . . for, the duty claimed by the commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the commissioners, the excess shall be repaid."

The rules regulating appeals to the High Court appear in the Appendix, *post*, p. 71.

(2) "No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal."

(3) "The costs of the appeal shall be in the discretion of the court . . ."

(l) The object of these words "notwithstanding an agreement to the contrary" is to prevent a license-holder contracting himself out of the benefits conferred on him under this section.

Sect. 2. By the Tithe Act, 1891 (53 & 54 Vict. c. 8), s. 1 (1): "Tithe rent-charge . . . issuing out of any lands shall be payable by the owner

NOTE (k). of the lands, notwithstanding any contract between him and the occupier of such lands, and any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rentcharge by the occupier shall be void." Where, by an agreement of a lease of a farm, the tenant agreed to pay the yearly rent of £235, and "also by way of further rent so much as the landlord shall pay for tithe rentcharge on the said premises," it was held by CHANNELL, J., that the above clause in the agreement was void under s. 1 (1) of the Tithe Act, 1891 (*Ludlow v. Pike* (1904), 20 T. L. R. 276).

(m) The amount to be paid to the license-holder is here marked, and will not be in addition to the compensation, but will be taken out of the amount of compensation, at the expense of other persons interested in the premises. This will in general be at the expense of the brewer.

(n) These rules have not yet been issued (August, 1904).

(o) The costs of an appeal to the High Court under the Finance Act, 1894, are in the discretion of the court. See Finance Act, 1894, s. 10 (3), *supra*, note (k). Failing an order of the High Court as to the commissioners' costs, they will be paid out of the amount of compensation awarded in the case under appeal.

3. Financial provisions.] (1) Quarter sessions (a) shall, in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year, for the purposes of this Act impose in respect of all existing on licenses (b) renewed in respect of premises within their area (c), charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the First Schedule (d) to this Act.

(2) Charges payable under this section in respect of any license shall be levied and paid together with and as part of the duties on the corresponding excise license (e), but a separate account shall be kept by the Commissioners of Inland Revenue of the amount produced by those charges in the area (c) of any quarter sessions, and that amount

shall in each year be paid over to that quarter sessions in accordance with rules^(f) made by the Treasury for the purpose. Sect. 3.

(3) Such deductions from rent as are set out in the Second Schedule^(g) to this Act may, notwithstanding any agreement to the contrary^(h), be made by any licenseholder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.

(4) Any sums paid under this Act to quarter sessions in respect of the charges under this section, or received by quarter sessions from any other source for the payment of compensation under this Act, shall be paid by them to a separate account under their management, and the moneys standing to the credit of that account shall constitute the compensation fund⁽ⁱ⁾.

(5) Any expenses incurred by quarter sessions in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties under this Act, and such expenses of the justices of the licensing district incurred under this Act as quarter sessions may allow^(k), shall be paid out of the compensation fund, and quarter sessions, in the exercise of their powers under this Act, shall have regard to the funds available for the purpose^(l).

Quarter sessions may, with the consent of a Secretary of State, borrow in accordance with rules^(m) made under this Act, on the security of the compensation fund, for the purpose of paying any compensation payable under this Act⁽ⁿ⁾.

(a) See note (a) to s. 2 (1) as to "quarter sessions."

This section establishes a compensation fund, and provides for contributions for that fund. It is the duty of quarter sessions to raise money for the compensation fund in every year, unless in any

Sect. 3. year they certify to the Home Secretary that it is unnecessary to do so. The maximum amount to be raised by contribution is fixed by Sched. I. The limit of the amount of compensation must be looked upon as part of the main principle of this Act. The amount available is in every case considerable. The total amount available in England and Wales on the assumption that the maximum charges are raised in every place is, according to a House of Commons Return (dated June 2nd, 1904), £1,209,572 13s. 4d.

NOTE (a).

Schedule II. fixes the contributions, the incidence being divided according to the supposed interest of the landlord and tenant in the premises. The tenant does not pay anything towards the contribution, unless he has a greater interest than that of a yearly tenant. See sub-s. (3).

(b) The expression "existing on license" is defined by s. 9 (4).

(c) The area of quarter sessions for a county includes, for the purpose of this Act, any borough not being a county borough, or any part thereof which is locally situated in that county (s. 8 (1)). The Act applies to a county borough as if it were a county, and substitutes for quarter sessions the whole body of justices acting in and for the borough (*ibid.*, sub-s. (2)). The city of London, for the purposes of this Act, is to be deemed a county borough (*ibid.*, sub-s. (3)).

(d) This schedule appears *post*, p. 50.

(e) The duties on excise licenses are payable when the licenses are taken out, that is, generally speaking, when the previous licenses expire. This may be October 10th, April 1st, or July 5th or 11th.

(f) The rules made under this sub-section are not yet issued (August, 1904).

(g) This schedule appears *post*, p. 51.

(h) The object of these words "notwithstanding any agreement to the contrary" is to prevent the parties contracting themselves out of their respective benefits conferred on them under this section. Cf. *Ludlow v. Pike*, in note (l) to s. 2, *supra*.

(i) This fund will be made up of (1) the graduated charges on licenses, according to their annual value "to be taken as for the publican's license duty," and (2) any sum received from quarter sessions from any other source for the payment of compensation. The only source, under this Act, from which payment into the compensation fund may come, is the charges made under this section. There is no other source at present available.

The items payable out of the compensation fund under this Act are:

- (1) Compensation to persons interested in premises, the license of which has been taken away under this Act (s. 2 (1)).
- (2) Expenses of quarter sessions (s. 3 (5)), including officers employed (s. 6 (d)).

(3) The expenses of licensing justices, as allowed by quarter sessions (*ibid.*) **Sect. 3.**

(4) Costs of Commissioners of Inland Revenue (s. 2 (4)). **NOTE (i).**

Rules may be issued by the Home Secretary under s. 6, *post*, to regulate the management and application of the compensation fund and the audit of accounts of quarter sessions.

The special payment for new licenses provided by s. 4, *infra*, is dealt with by sub-s. (4) of that section.

(k) This includes the costs of justices appearing at quarter sessions under s. 1 (2), *supra*, and any expenses to which they may have been put in the exercise of their administrative functions and in the preparation of their report to quarter sessions under s. 1 (1).

The procedure under this Act before quarter sessions, not being an appeal, licensing justices cannot rely on ss. 27 and 29 of the Alehouse Act, 1828, or on s. 20 of the Licensing Act, 1902, for their costs.

(l) The power of quarter sessions to award costs or expenses payable under this sub-section is limited in amount by the various claims made upon the compensation fund. The Secretary of State may make rules to regulate the management and application of the compensation fund. See s. 6, *post*.

(m) These rules have not yet been issued (August, 1904).

(n) The time within which money borrowed under this Act is to be replaced may not exceed fifteen years. See s. 6 (b). Rules may be made by the Home Secretary to provide for the enforcement of any security given for money borrowed, and for the time within which the money borrowed may be replaced.

4. Provisions as to new licenses.] (1) The power of the County Licensing Committee to confirm new licenses (*a*), and any other power of that committee shall be transferred to quarter sessions.

(2) The justices, on the grant of a new on license (*b*), may attach to the grant of the license such conditions, both as to the payments to be made and the tenure of the license and as to any other matters, as they think proper in the interests of the public (*c*) ; subject as follows :

(a) Such conditions shall in any case be attached as, having regard to proper provision for suitable

Sect. 4.

premises and good management, the justices think best adapted for securing to the public any monopoly value which is 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: Provided that, in estimating the value as licensed premises of hotels or other premises where the profits are not wholly derived from the sale of intoxicating liquor, no increased value arising from profits not so derived shall be taken into consideration (*d*):

- (b) The amount of any payments imposed under conditions attached in pursuance of this section shall not exceed the amount thus required to secure the monopoly value (*e*).

(3) The justices may, if they think fit, instead of granting a new on license (*b*) as an annual license, grant the license for a term not exceeding seven years (*f*), and where a license is so granted for a term—

- (a) Any application for a re-grant of the license on the expiration of the term shall be treated as an application for the grant of a new license (*g*), not as an application for the renewal of a license, and during the continuance of the term the license shall not require renewal (*h*): and
- (b) Any transfer (*i*) of the license shall, subject to any conditions attached thereto on the grant (*k*), have effect for the remainder of the term of the license, and may be granted at a general annual licensing meeting as well as at special sessions, and any reference to special sessions in any

enactment relating to transfers or protection orders (*l*) shall include a reference to the general annual licensing meeting. Sect. 4.

(4) The amount of any payments made in pursuance of any conditions under this section shall be collected and dealt with in the same manner as the duties on local taxation licenses within the meaning of section twenty of the Local Government Act, 1888 (*m*).

(5) A license granted for a term (*n*) under this section may (without prejudice to any other provisions as to forfeiture (*o*)) be forfeited (*p*), if any condition imposed under this section is not complied with, by order of a court of summary jurisdiction, made on complaint (*q*), or, if the holder of the license is convicted of any offence committed by him as such (*r*), by the court by whom he is convicted, but where a license is so forfeited the owner of the licensed premises shall have all the rights conferred on owners by section fifteen of the Licensing Act, 1874 (*s*).

(6) On the confirmation of a new on license (*t*), the confirming authority may (*u*), with the consent of the justices authorised to grant the license, vary any conditions attached to the license under the provisions of this section (*v*).

(*a*) A "new license" means "a license for the sale of any intoxicating liquor, granted at any general annual licensing meeting in respect of premises in respect of which a similar license has not theretofore been granted" (Licensing Act, 1874, s. 32). The provision in this section as to the confirming authority will apply to off licenses in counties as well as to on licenses.

Before this Act, the confirming authority in counties was the county licensing committee, appointed from among themselves by justices in quarter sessions (Licensing Act, 1872, s. 37), and in boroughs the confirming authority was the whole body of borough justices (*ibid.*, s. 38). In the case of boroughs in which there were not ten justices acting in and for such borough the confirming

Sect. 4. authority was a joint committee, appointed partly by the borough justices, and partly by the county licensing committee. And by **NOTE (a).** s. 19 of the Licensing Act, 1902, application for the confirmation of the grant of a license is not to be heard until twenty-one days at least have expired since the date of the grant. Now, under this section the power of the county licensing committee is transferred to quarter sessions. In boroughs the confirming authority will remain as before.

The provisional grant of the license must be confirmed by the confirming authority (Licensing Act, 1874, s. 22), and the order for the removal of the license from one part of the district to another must also be confirmed (Licensing Act, 1872, s. 50). The confirming authority are bound, like the licensing justices, to hear all competent objections, such as that there are too many licensed houses, that the annual value of the premises is insufficient, that the applicant is a person of bad character, etc. The only qualification is that only such persons as appeared before the licensing justices and opposed the grant of the new license, and no other person, are entitled to appear and oppose the confirmation of the grant (Licensing Act, 1872, s. 43). They do not stand towards the licensing justices in the position of a court of appeal. They are merely to go over the same ground, and exercise their independent judgment on the same materials, or of such materials as the applying and objecting parties place before them. They are not bound merely to register the conclusion come to by the licensing justices, and they may refuse to confirm the grant for sufficient reasons (*R. v. Mayor of York* (1853), 1 E. & B. 558; 22 L. J. M. C. 73). The confirming authority may award such costs as they shall deem just to the party who shall succeed in the proceedings before them; they have power to make rules as to proceedings to be adopted for the confirmation of new licenses and the costs to be incurred in any such proceedings, and the person by whom such costs are to be paid (Licensing Act, 1872, s. 43).

If a license, granted without jurisdiction, is confirmed by them, a writ of *certiorari* will lie to bring it up to be quashed (*R. v. Manchester JJ.*, [1899] 1 Q. B. 541; 68 L. J. Q. B. 358; 63 J. P. 360; 47 W. R. 410; 8 L. T. 531; confirmed C. A., *R. v. Sunderland JJ.*, [1901] 2 K. B. 257; 70 L. J. K. B. 946; 65 J. P. 598; 85 L. T. 183; 17 T. L. R. 551). To entitle a person to a *certiorari*, it is necessary that he should have a real interest in the decision of the justices; and it has been held that a rival firm of brewers have such a real interest (*R. v. Groom, Ex parte Cobbold*, [1901] 2 K. B. 636; 65 J. P. 452; 49 W. R. 484; 84 L. T. 534; 17 T. L. R. 433). The rules made regulating procedure before a confirming authority may be objected to, if *ultra vires* (*R. v. Bird, Ex parte Needes*, [1898] 2 Q. B. 340; 62 J. P. 422; 79 L. T. 156; 67 L. J. Q. B. 618; 46 W. R. 528; 14 T. L. R. 484). In the exercise of their jurisdiction the discretion of the confirming authority on the merits is absolute (*R. v. Middlesex*

Licensing Committee (1878), 42 J. P. 649; *Re Annandale Licensing Committee* (1873), 37 J. P. 85; *R. v. Pownall* (1890), 54 J. P. 438; 63 L. T. 418; 62 L. J. M. C. 174; 6 T. L. R. 282.

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NOTE (a).

(b) See definition of on license in s. 9 (4) *post*. This Act confers no power to attach conditions to the grant of a new off license.

(c) This provision is entirely a new departure. It was held in *R. v. Bowman*, [1898] 1 Q. B. 663; 62 J. P. 374; 67 L. J. Q. B. 463; 78 L. T. 230; 14 T. L. R. 303, that the grant of a license on condition of a money payment was bad. It was not, however, an uncommon practice for justices to make a memorandum on the license for their future guidance as to the terms on which the licensee undertook to carry on his business. Examples of this will be found in the quarter sessions cases of *Tate v. Newington JJ.* (1901), 65 J. P. 296, and *Stevens v. Brentford Licensing JJ.* (1901), 65 J. P. 345. Now justices, on the grant of a new on license, may attach to the grant, such conditions as they think proper in the interests of the public, both as to the payment to be made, and the tenure of the license, and as to any other matters. The limitation as to conditions being in the interests of the public will prevent the justices imposing such conditions as arose in *R. v. Athay* (1758), 2 Burr. 653, viz., that the applicant must pay a debt to a third person.

The conditions to the grant of a new license are, "having regard to proper provision for suitable premises and good management," subject to two provisions: (1) That the justices must make such provisions as they can for securing to the public the monopoly value, and (2) That they must not make the applicant pay for the license more than the monopoly value.

Under sub-s. (6) of this section, the confirming authority have power to vary any conditions placed on the grant of a new on license by the licensing justices, but only with the consent of the licensing justices.

(d) In calculating the monopoly value, similar considerations will be taken into account, as in assessing the compensation under s. 2, *supra*. That is to say, the monopoly value will be the difference between the value which the premises will bear when licensed and the value of the same premises if they were not licensed, taking into account any expenditure there may be in respect of proper provision for suitable premises and good management. In the case of hotels or other premises where the profits are not wholly derived from the sale of intoxicating liquor, any increased value arising otherwise than from the sale of intoxicating liquor must be excluded.

A breach of any reasonable undertaking given to the justices on the grant of the license will constitute a ground that the premises have been ill-conducted (s. 9 (2), *post*).

(e) Having ascertained the amount of the monopoly value, the justices have no power to impose, as a condition to be attached to the grant of the license, the payment of a larger sum of money than the monopoly value, ascertained in the manner laid down by sub-s. (2) (a).

Sect. 4. (f) This is an entirely new departure. Formerly, licenses were granted for one year only, and if not renewed they lapsed. Even in the case of a provisional grant under s. 22 of the Licensing Act, 1874, such grant had to be renewed from year to year, as in other cases (*R. v. London County JJ.* (1889), 24 Q. B. D. 341; 54 J. P. 213; 59 L. J. M. C. 71; 62 L. T. 458; 38 W. R. 269).

NOTE (f).

In fixing a number of years, which, in any case must not exceed seven, justices will probably fix such a term as will enable the licensee to get back any money he may have spent in building, altering, or reconstructing his premises *quâ* licensed premises. The license, although granted for a term of years, may be forfeited on the breach of any condition attached to the grant of the license, or on conviction of the holder of the license of any offence committed by him as such, as well as on any ground on which the license may be forfeited (sub-s. (5) of this section).

(g) On the expiration of the term for which the license was granted, the premises can be no longer used as licensed premises, unless a new license be obtained. If it is sought to obtain a new license, all the notices for a new license must be given, and it will be within the absolute discretion of the justices to refuse such license, and if they grant it, to grant it upon such conditions as they think fit; and the grant will require fresh confirmation.

(h) It is the duty of every licensed person who holds an annual license to apply annually for a renewal, and if he neglects to apply, his license will expire (Lord ESHER, M.R., in *Sharpe v. Wakefield* (1888), 22 Q. B. D. 42; *R. v. Newcastle JJ.* (1887), 51 J. P. 244; *Carman v. St. Margaret's JJ.* (1900), 64 J. P. 488). In the case, however, of a license granted for a term not exceeding seven years, no application for a renewal during the continuation of the term is necessary. But, on the expiration of the term, the applicant will not be entitled to apply for a renewal, but for a new license. One consequence of this will be that the applicant will have no right of appeal to quarter sessions or to claim compensation if his application for a new license is refused. Or if his application is granted, the justices may attach such conditions to the grant as are mentioned in sub-s. (2), *supra*.

During the continuation of the term the applicant will not be liable to pay the justices' clerk's fees usually paid on a license being renewed at brewster sessions; but the Excise license must be taken out from year to year, and the proper duty paid thereon.

(i) See note to s. 9 (1).

(k) These are the conditions referred to in sub-s. (2), *supra*.

(l) A protection order, or temporary authority, is granted under the Licensing Act, 1842 (5 & 6 Vict. c. 44), s. 1, and the Licensing Act, 1902 (2 Edw. 7, c. 28), s. 15, at petty sessions, and usually holds good until the next transfer sessions. The effect of this provision will be that a protection order will hold good (if no transfer sessions intervene) until the next annual licensing meeting, when an appli-

cation for a transfer is made. The sub-section does not authorise an application for a protection order to be made at the annual licensing meeting. Note that this provision relates to "leased" licenses only. **Sect. 4.**
 NOTE (l).

(m) These amounts will be levied by the Inland Revenue in precisely the same manner as the "charges" under s. 3 (2), *ante*.

The proceeds of duties on local taxation licenses are paid to county councils. By s. 20 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), the Commissioners of Inland Revenue shall from time to time, in such manner and under such regulations as the Treasury from time to time prescribe, pay into the Bank of England to the local taxation account as may be fixed by the regulations such sums as may be ascertained in manner provided by the regulations to be the proceeds of the duties collected by the commissioners in each administrative county in England and Wales on certain licenses (specified in Schedule I. to the Act). The amount ascertained to have been collected in each county in respect of duties on local taxation licenses shall from time to time be certified by the Commissioners and paid under the direction of the Local Government Board out of the local taxation account to the council of such county. The commissioners may, if they think fit, vary such certificate, but unless so varied their certificate shall be conclusive.

(n) This refers to sub-s. (3), under which a lease of a license may be granted for a term not exceeding seven years.

(o) A license may be forfeited *inter alia* on a second or subsequent conviction of selling without a license (Licensing Act, 1872, s. 3); on conviction for making internal communication between licensed premises and house of public resort (*ibid.*, s. 9); on conviction for permitting premises to be a brothel (*ibid.*, s. 15); on conviction for harbouring thieves, etc. (Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 10); on conviction for holding seditious meetings (39 Geo. 3, c. 79, s. 14); on conviction for felony, etc. (Licensing Act, 1874, s. 15); altering licensed premises without consent (Licensing Act, 1902, s. 11 (2)).

(p) Where a lease of a license (that is, a license for a term of years) is granted, it is obvious that there must be some provision for forfeiting the license in the case of misconduct. This sub-section provides two grounds under which a license may be forfeited, viz.: (1) where a condition attached to the grant of the license has not been complied with; and (2) where the holder of a license has been convicted of an offence committed by him as such holder. This, of course, does not prevent the license from being forfeited on any other ground provided by the Licensing Acts. See note (o), *supra*.

(q) Where a condition has not been complied with proceedings may be taken before the local court of summary jurisdiction, and on the breach of the condition being established, the court may forfeit the license. It is open to anyone to make a complaint (*Morden v. Porter* (1860), 7 C. B. (n.s.) 641). Breach of an undertaking given on

Sect. 4. the grant of a new license renewable annually or given on the renewal constitutes misconduct which may justify the renewal being refused
NOTE (g). at the annual licensing meeting. See ss. 1, 9 (2). The forfeiture of a license for a term of years is made by a court of summary jurisdiction. An appeal to quarter sessions from an order of forfeiture will lie under the Licensing Act, 1872, s. 52.

(r) That is, an offence committed by him as a licensed person. The same expression, "committed by him as such," was used in s. 55 of the Licensing Act, 1872, now repealed, and is used in s. 9 (1) of the Licensing Act, 1902. For offences that may be committed by a licensed person "as such," see offences by licensed persons in table of offences in Paterson's Licensing Acts (15th edit.), by the present editor, at p. lxxxvii.

Instances of offences not committed by him as such are: Found drunk on licensed premises under the Licensing Act, 1872, s. 12; keeping the licensed premises for the purpose of exercising a lottery (67 J. P. 52; Times, January 22nd, 1903), and other offences committed by him distinct from his business as a licensed person.

(s) Section 15 of the Licensing Act, 1874 (37 & 38 Vict. c. 49), provides for the temporary continuance of licenses forfeited for certain offences.

It enacts that "Where any licensed person is convicted for the first time of any one of the following offences,—

- "(1) Making an internal communication between his licensed premises and any unlicensed premises;
- "(2) Forging a certificate under the Wine and Beerhouse Acts, 1869 and 1870;
- "(3) Selling spirits without a spirit license;
- "(4) Any felony;

"and in consequence either becomes personally disqualified or has his license forfeited, there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a license in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licenses at special sessions shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee."

It has been held that the court of summary jurisdiction has an absolute discretion as to granting or refusing a transfer license to the owner when the license has been forfeited by a conviction (*R. v. Moore* or *Herts JJ.* (1881), 7 Q. B. D. 542; 45 J. P. 768; 50 L. J. M. C. 121). And the owner is equally entitled to appeal to quarter sessions (*R. v. West Riding JJ.* (1883), 11 Q. B. D. 417; 52 L. J. M. C. 99; 48 J. P. 149).

Where justices on a renewal have a limited discretion, as in the case of *ante*-1869 beerhouses, the court of summary jurisdiction has, on a forfeiture of the license, an absolute discretion as to granting a temporary authority to carry on the business under s. 15 of the Act of 1874 (*Tower JJ. v. Chambers* (1904), 20 T. L. R. 784; overruling *Ex parte Flinn & Sons* (No. 2), [1889] 2 Q. B. 607; 68 L. J. Q. B. 1025; 63 J. P. 740; 48 W. R. 29; 81 L. T. 22; 15 T. L. R. 532).

It was held in *Stevens v. Green* or *Sharnbrook JJ.* (1889), 23 Q. B. D. 143; 58 L. J. M. C. 167; 61 L. T. 240; 23 W. R. 605; 53 J. P. 423, that where a licensed person had become personally disqualified, or had his license forfeited, the owner of the premises could not apply under the Alehouse Act, 1828, s. 14, for a renewal of the license, but must apply under the Licensing Act, 1874, s. 15, for a new license, and such application must be made to the next special sessions.

(*t*) It will be noticed that this sub-section does not apply to the confirmation of off licenses.

(*u*) As to confirming authority, see note (*a*), *ante*.

(*v*) If the licensing justices refuse to vary any conditions, the confirming authority may confirm the grant with the conditions as proposed by the licensing justices, or if they disagree with the conditions they may refuse to confirm, in which latter case it will be tantamount to a refusal to grant a license.

5. *Division of area and appointment of committees for purposes of Act.*] (1) Quarter sessions may, if they think fit, divide their area into districts for the purposes of this Act, and in that case this Act shall operate as if those districts were separate areas for the purposes of this Act under the same quarter sessions (*a*).

(2) Quarter sessions may delegate any of their powers and duties under this Act to a committee appointed in accordance with rules (*b*) made by them under this section, and, except in a county borough, shall so delegate their power of confirming the grant of a new license, and of determining any question as to the refusal of the renewal of a license under this Act and matters consequential thereon (*c*), and county licensing committees shall cease to be appointed under the Licensing Act, 1872 (*d*).

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(3) Quarter sessions (*e*) may make rules to be approved by a Secretary of State, for the mode of appointment of committees under this section, and for the number, the quorum, and (so far as procedure is not otherwise provided for) the procedure of those committees.

(4) The justices of a licensing district being a county borough shall exercise their powers under the Licensing Acts, 1828 to 1902 (*f*), as to the renewal of licenses (*g*) through the borough licensing committee appointed under section thirty-eight of the Licensing Act, 1872, and such number as the whole body of justices acting in and for the borough determine shall be substituted for seven as the maximum number, and seven shall be substituted for three as the minimum number, of that committee (*h*).

(5) The justices of any borough, not being a county borough but having a separate commission of the peace, shall be entitled to appoint one of their number to act, with reference to the determination of any question as to the refusal of the renewal of a license under this Act and any matters consequential thereon, on the committee appointed under this section by quarter sessions, and for those purposes any justice so appointed shall be deemed to be an additional member of the committee (*i*).

(*a*) This sub-section is apparently intended to be used in cases where the circumstances of an area call for special treatment. For instance, there may be cases of areas within a county in which the justices, by arrangement with brewers and other owners of licensed property, and by means of the expenditure of large sums of money on the part of brewers and other owners, have reduced licenses to a proper standard, and it might be considered unfair that the brewers and other owners should have to contribute in respect of their houses in these areas towards the compensation to be paid to the licensed houses in the rest of the county. Under this provision, quarter sessions would be able to make these areas separate areas, independent of the rest of the county.

(*b*) Quarter sessions may make rules to be approved by the Secretary of State under sub-s. (3).

(c) Quarter sessions are enabled, by this sub-section, to delegate any of their powers under the Act to a committee; but two things they must delegate, viz., their power to confirm the grant of a new license, and their power of determining any question as to the refusal of the renewal of the license reported to them and matters consequential thereon. Other questions, such as the separation of an area for the purposes of the Act, or the question whether any compensation money should be levied or not, may be delegated to a committee or not, as quarter sessions think fit. In county boroughs, or in the city of London, there will be the same power of delegating to a committee, but it will not be obligatory to delegate their power of confirming the grant of a new license, or determining any question as to the refusal of the renewal of the license under this Act, as in the case of quarter sessions for the county.

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NOTE (c).

The power of "determining any question as to the refusal of the renewal of a license under this Act and matters consequential thereon" which must be delegated to a committee, is a large power, and would seem to include, *inter alia*, the power of considering reports from licensing justices, consulting with the licensing justices thereon, making inquiries, determining who are the persons interested in the licensed premises, hearing persons interested in the premises or in the renewal of the license (including the licensing justices) if necessary, refusing the renewal, approving the amount of compensation where the amount is agreed, and allocating the amount of compensation to be paid among the persons interested.

(d) A county licensing committee was appointed under s. 37 of the Licensing Act, 1872. The justices in quarter sessions assembled annually appointed a committee from among themselves, or they might appoint more than one such committee, and assign to such committee such area of jurisdiction as they might think expedient. County licensing committees will, of course, no longer be appointed.

(e) As to quarter sessions, see s. 9 (4); also s. 8 (2), (3), *post*. Amongst other things the rules will provide for the term of office of members of committees.

(f) As to the Acts comprised in the short title "Licensing Acts 1828 to 1902," see note (a) to s. 10, *post*.

(g) This relates to the renewal of all licenses and is not restricted to on licenses.

(h) By s. 38 of the Licensing Act, 1872, it is provided that in every borough in which there were ten justices acting in and for such borough, or upwards, the justices should annually, in the fortnight preceding the commencement of the period during which the general annual licensing meeting for the borough may be held, appoint from among themselves, for the purposes of the Licensing Act, 1872, a committee of not less than three, nor more than seven, of their number; but no justice should be appointed on such committee

Sect. 5. unless he was qualified to act under the Act. Under this section (sub-s. (4)), the licensing committee in county boroughs shall consist

NOTE (h). of not less than seven members, the maximum number being such number as the whole body of justices acting in and for the borough may determine. The justices disqualified under s. 60 of the Licensing Act, 1872, will be disqualified from acting or voting in the election of such a committee (*Attorney-General v. Willett* (1896), 60 J. P. 643; 12 T. L. R. 494). Hitherto, the whole body of licensing justices in a borough sat at brewster sessions to hear applications for renewals of licenses. Now, these applications will be heard in county boroughs by a committee appointed under this sub-section. Should the committee determine to refuse renewal of any license on any ground other than the grounds mentioned in sub-s. (1) of s. 1, *ante*, they must report the matter, under sub-s. (2) of s. 1, *ante*, to the whole body of the justices of the borough. The whole body of justices in a county borough (and in the city of London) take the place of quarter sessions, see s. 8 (2), (3), *post*.

In non-county boroughs the reports of licensing justices will be made to quarter sessions of the county.

Where county boroughs are created after the passing of this Act, and moneys have been raised or borrowed for the purpose of compensation under this Act, the matter will become one for adjustment under the Local Government Act, 1888, s. 59.

(i) This sub-section meets any objection that might be raised to the Act on the ground that while boroughs having a separate commission of the peace were part of the county area, the justices of such boroughs had no representation on the quarter sessions committee which dealt with renewals of licenses reported under this Act.

The term of office of a member of the committee appointed under this sub-section will probably be fixed by the rules made under sub-s. (3).

6. Rules.] A Secretary of State may make rules for carrying into effect this Act, and may by those rules amongst other things—

(a) provide for the provisional renewal of licenses which are included in reports of the justices of a licensing district under this Act, and for consultation with those justices as to their reports, and for the time and manner of the consideration of those reports and of the payment of compensation; and

- (b) provide for the enforcement of any security given **Sect. 6.**
for money borrowed, and for the time, not exceed-
ing fifteen years, within which money borrowed
is to be replaced ; and
- (c) regulate the management and application of the
compensation fund and the audit of the accounts
of quarter sessions ; and
- (d) provide for constituting, where requisite, committees
of quarter sessions standing committees, and for
the employment of officers for the purposes of this
Act ; and
- (e) regulate the procedure of quarter sessions on the
consideration of the reports of justices of a
licensing district under this Act and on any hear-
ing under this Act with reference to the refusal
of the renewal of on licenses or the approval
or division of the amount to be paid as compen-
sation ; and
- (f) provide for the authentication of any documents on
behalf of quarter sessions or their committees.

Rules under this section have not yet been issued (August, 1904).

7. *Returns to Secretary of State.*] Quarter sessions, with respect to their own action and that of the justices of licensing districts under this Act, and the confirming authority, with respect to new licenses granted under this Act, shall in each year make such returns to the Secretary of State as the Secretary of State may require (a).

(a) By virtue of s. 8 (2) (3) licensing justices of county boroughs and of the city of London will also have to make these returns.

8. *Authorities and areas.*] (1) The area of quarter sessions for a county shall for the purposes of this Act

Sect. 8. include any borough (not being a county borough) or any part thereof which is locally situated in that county (*a*).

(2) This Act shall apply to a county borough as if it were a county, with the substitution for quarter sessions of the whole body of justices acting in and for the borough (*b*).

(3) The City of London for the purposes of this Act shall be deemed to be a county borough (*c*).

(*a*) Licensing appeals from borough justices went to the quarter sessions for the county (*R. v. Reading JJ.* (1841), 2 Q. B. 96; *R. v. Bristol Recorder* (1854), 24 L. J. M. C. 43). There is no alteration made in this respect, so far as non-county boroughs are concerned. Appeals from refusals under s. 1 (1) of this Act (including appeals from county boroughs) will go to the quarter sessions for the county, and reports from licensing justices (other than from non-county boroughs and the city of London) under s. 1 (2) will also go to the quarter sessions for the county.

Appeals against the refusal of licenses on any of the grounds mentioned in s. 1 (1) in any county borough will go to the quarter sessions for the county; while reports from the licensing committee of justices in county boroughs will go, not to the quarter sessions, but to the whole body of licensing justices in the county borough.

(*b*) The whole body of licensing justices of a county borough will take the place of quarter sessions under this Act; they will therefore receive the reports from the licensing committee appointed under s. 5 (4), *ante*, and may refuse to renew any case reported to them on payment of compensation to the persons interested in the licensed premises.

A list of county boroughs appears in the Appendix, *post*.

(*c*) The city of London is not a county borough, but it is to be treated as one for the purposes of this Act. (*Cf. KAY, L.J., in Green v. Marsh*, [1892] 2 Q. B. at p. 335.)

9. *Application of Act to special cases, and interpretation.*] (1) The provisions of this Act shall apply to the transfer of an existing on license (*a*) as they apply to the renewal of an existing on license, with the substitution of transfer for renewal (*b*).

(2) If the justices of a licensing district refuse to renew an existing on license on the ground that the holder of the license has persistently and unreasonably refused to supply suitable refreshment (other than intoxicating liquor) at a reasonable price (*c*), or on the ground that the holder of the license has failed to fulfil any reasonable undertaking given to the justices on the grant or renewal of the license (*d*), the justices shall be deemed to have refused the license on the ground that the premises had been ill-conducted (*e*):

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Provided that where the justices, on an application for the renewal of an existing on license, ask the licenseholder to give an undertaking as aforesaid (*d*), they shall adjourn the hearing of the application (*f*), and cause notice of the required undertaking to be served upon the registered owner (*g*) of the premises, and give him an opportunity of being heard.

(3) Section nineteen of the Wine and Beerhouse Act, 1869, and section seven of the Wine and Beerhouse Amendment Act, 1870, are hereby repealed, and, in the application of this Act to licenses to which the said section nineteen extends (*h*), the grounds mentioned in section eight of the Wine and Beerhouse Act, 1869 (*i*), shall be substituted for the grounds mentioned in this Act (*k*) as the grounds on which the power to refuse the renewal of an existing on license (*l*) is reserved to the justices of a licensing district (*m*).

(4) In this Act—

The expression “county” includes any riding, part, or division of a county having a separate commission of the peace and a separate court of quarter sessions ;
and

Sect. 9. The expression "quarter sessions" means, as respects a county, the court of quarter sessions for that county :

Provided that, where quarter sessions have customarily been held separately by adjournment or otherwise for any part of a county as defined by this Act, the Secretary of State may by order, on the application of the justices sitting at each such separate sessions, constitute for the purposes of this Act any part of the county for which quarter sessions are for the time being so separately held a separate county, and the justices usually sitting at such separate quarter sessions a separate quarter sessions, and make all necessary provisions for the administration of the Act in such a case (*n*) :

The expression "on license" means a license for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises, and the expression "new on license" shall be construed accordingly ; and the expression "existing on license" means an on license in force at the date of the passing of this Act (*o*), and includes a license granted by way of renewal from time to time of a license so in force, whether such license continues to be held by the same person, or has been or may be transferred to any other person or persons :

Provided that, where a provisional grant and order of confirmation of an on license has been made before the passing of this Act under section twenty-two of the Licensing Act, 1874, and is subsequently declared to be final under that section, the license shall, although not in force at the date

of the passing of this Act (o), be deemed to be an **Sect. 9.**
existing on license :

The expression "transfer" (b) means a transfer under section four or section fourteen of the Alehouse Act, 1828 (p).

(a) As to "existing on license," see sub-s. (4) of this section.

(b) The transfer of a license from one person to another is granted pursuant to ss. 4, 14 of the Alehouse Act, 1828, *post*.

The notice for the transfer must be signed by the applicant or his authorised agent, and must set forth the name of the person to whom it is intended the license shall be transferred, together with his place of residence and his trade or calling during the six months preceding the time of serving such notice (Licensing Act, 1872, s. 40 (2); Licensing Act, 1902, s. 16 (3)). Fourteen days prior to the special sessions at which the application for transfer is to be made, the applicant must serve a notice on the overseers and the superintendent of police for the district (Licensing Act, 1872, s. 40 (2)). Hitherto applications for transfers have only been heard at special transfer sessions held pursuant to s. 4 of the Alehouse Act, 1828. But s. 4 (3) (b), *ante*, p. 30, empowers the general licensing meeting, as well as special sessions, to grant a transfer of a license which has been granted for a term of years.

The general rule hitherto has been that justices had the same discretion, but not more, as to the grant of a transfer from one person to another as they had as to the renewals (COCKBURN, C.J., in *R. v. Smith* (1878), 42 J. P. 295; Lord COLERIDGE, C.J., in *Boodle v. Birmingham JJ.* (1881), 45 J. P. 636; CHARLES, J., in *Traynor v. Jones*, [1894] 1 Q. B. p. 56). But this Act introduces considerable modifications on this rule. In the case of a license granted for a term of years, licensing justices, apparently, have no power to refuse the transfer, if the character of the applicant is satisfactory and he is a "fit and proper" person to hold a license. And in the case of ordinary publicans' full on license they may refuse a transfer on the grounds mentioned in s. 1 (1), *supra*. If licensing justices wish to take away a license on the ground of redundancy or other similar ground when application is made to them for a transfer, they must report thereon to quarter sessions under s. 1 (2), *ante*, p. 9, who may thereupon take away the license on payment of compensation.

In the case of a county borough, applications for transfer of on licenses will apparently be heard through the borough licensing committee in the same way as renewals. See s. 5 (4), *ante*.

No notice of opposition is required to be given in the case of a transfer.

It would appear that this sub-section applies to the case of a transfer from one house to another as well as from one person to

Sect. 9. another: so that where an application is made under s. 14 of the Alehouse Act, 1828, *post*, for the transfer of the license from one house to another, it would appear that it could not be refused without compensation save on one or more of the grounds mentioned in s. 1 (1), *ante*.

NOTE (b).

(c) At common law, if a man keeps an inn, that is, a house of entertainment for man and beast, or, rather, for travellers, he is bound, if he has accommodation, to receive and procure food for the traveller, and may be indicted or become liable to an action if he refuses to receive the traveller when he has accommodation, and can make no reasonable objection.

An inn has been variously described. It is a place "instituted for passengers and wayfaring men" (*Cayle's Case*, 8 Co. Rep. 32; 1 Smith's Leading Cases (10th ed.), 115). An inn is "a house where a traveller is furnished with everything he has occasion for, while on his way" (BAYLEY, J., in *Thompson v. Lacey* (1820), 3 B. & Ald. 283). An inn is "a house, the owner of which holds out that he will receive all travellers who are willing to pay a price adequate to the sort of accommodation required, and who come in a situation in which they are fit to be received" (BEST, J., *ibid.*). "An innkeeper is not to select his guests. He has no right to say to one, 'You shall come into my inn,' and to another, 'You shall not,' as everyone coming, and conducting himself in a proper manner, has a right to be received. And for this purpose, innkeepers are a sort of public servants, they having in return a kind of privilege of entertaining travellers and supplying them with what they want" (COLERIDGE, J., in *R. v. Ivens* (1835), 7 C. & P. 213). See further *R. v. Sprague* (1899), 63 J. P. 233; *R. v. Smith* (1901), 65 J. P. 521; *Browne v. Brandt*, [1902] 1 K. B. 696. But in the case of an ordinary public-house or drink shop there is no obligation at common law for the licensed person to sell liquor to anyone. In such a place "no one has a right to insist on being served, any more than in any other shop" (KELLY, C.B., in *R. v. Rymer* (1887), 2 Q. B. D., p. 140).

This sub-section, however, places an obligation upon the holder of any on license (other than an *ante*-1869 beerhouse) as defined by this Act to supply suitable refreshment (other than intoxicating liquor), at a reasonable price, to any person; otherwise the renewal or transfer of the license may be refused. It does not render the holder of a license of an ordinary public-house or drink shop, as distinct from an inn, liable to be indicted for not supplying refreshment, or to an action, but his refusal will place his license in jeopardy. Doubtless a license-holder would be justified in refusing to supply a person who came to the licensed premises drunk, or who behaved in an indecent or improper manner (*R. v. Ivens, supra*), or who came accompanied by a dog, which "might cause alarm or annoyance" to other guests

(*R. v. Rymer* (1877), 2 Q. B. D. 136 ; 46 L. J. M. C. 108 ; 41 J. P. 199 ; 25 W. R. 415). **Sect. 9.**

To constitute misconduct under this sub-section the refusal must be persistent and unreasonable, which would seem to indicate that there must be a refusal not limited to one occasion. In *Broad v. Broad* (1898), 78 L. T. 687, Sir FRANCIS JEUNE and BARNES, J., were of the opinion that acts of persistent cruelty under the Summary Jurisdiction (Married Women) Act, 1895, might all take place in one day. But query if this ruling would apply to a case under this sub-section. **NOTE (c).**

The application for "suitable refreshment" must be made at a reasonable time.

(d) The licensing justices have thus the power of requiring the applicant for the grant of the renewal of the license to enter into some reasonable undertaking. If, in the case of renewal, the applicant refuses to submit to the conditions, and refuses to accept the license with the conditions, he may appeal to quarter sessions, under the Alehouse Act, 1828, ss. 27 and 29. If his appeal is unsuccessful, he will have to take the license with the conditions, or discontinue selling under the license, in which case he will be entitled to no compensation under this Act.

The breach of an undertaking which will amount to ill-conduct within this sub-section will be an undertaking given to the justices after the passing of this Act. The sub-section does not appear to refer to any undertaking given before the passing of the Act. In order to remove any doubt on the point, licensing justices at the next brewster sessions should reimpose all existing conditions.

(e) This definition has reference to s. 1 (1), *ante*, p. 9, which enables licensing justices to refuse, on the ground of misconduct, the renewal, without payment of compensation. This sub-section does not exhaust the definitions of misconduct ; it only describes what shall be deemed misconduct in particular cases.

A license granted for a term of years under s. 4 (3), *ante*, may be forfeited for breach of any condition attached to such license. See s. 4 (5), *ante*.

(f) This adjourned hearing may take place on a day beyond the month prescribed by s. 14 (1) of the Licensing Act, 1902, for holding the adjourned hearing (Licensing Act, 1902 (2 Edw. 7, c. 28), s. 14 (6)). See also *R. v. Bristol JJ.* (1903), 67 J. P. 375).

(g) Under s. 36 of the Licensing Act, 1872, the owner of the premises is entitled to be entered on the register of licenses. As to who is entitled to be registered, see Licensing Act, 1874, s. 29, in note (s) to s. 1, *ante*.

The notice referred to in this section may be served, and sent by post, and until the contrary is proved, shall be deemed to have been served, and received respectively, at the time when the letter containing the same would be delivered in the ordinary course of post ;

Sect. 9. and in proving such service or sending, it shall be sufficient to prove that the letter containing such notice was prepaid, and properly addressed (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 70).

NOTE (g).

(h) The licenses to which s. 19 of the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), extends are what are popularly known as the *ante*-1869 beerhouse licenses, namely, licenses which were on May 1st, 1869, in force and have been renewed from time to time, whether held by the same person or not, or have been or may be transferred to any other person or persons, with respect to any house or shop for the sale by retail therein of beer, cider, or wine to be consumed on the premises (Wine and Beerhouse Act, 1869, s. 19; Wine and Beerhouse Amendment Act, 1870, s. 7; *Igoe v. Shann*, [1903] A. C. 320; 72 L. J. K. B. 693; 67 J. P. 333; 89 L. T. 105; 19 T. L. R. 598).

(i) The grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869, are:

“(1) That the applicant has failed to produce satisfactory evidence of good character:

“(2) That the house or shop in respect of which a license is sought, or any adjacent house or shop owned or occupied by the person applying for a license, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character:

“(3) That the applicant having previously held a license for the sale of wine, spirits, beer or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such license, or from selling any of the said articles:

(4) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required.”

(k) The “grounds mentioned in this Act” are the grounds set out in s. 1 (1), *ante*.

(l) See definition in sub-s. (4) of this section.

(m) This sub-section deals with *ante*-1869 beerhouses. The effect of it is that the renewal of the license of *ante*-1869 beerhouses will be subject to exactly the same conditions as the license of any other house. On the other hand, if the license is taken away, on any ground other than those mentioned in s. 8 of the Act of 1869 (see note (i), *supra*), compensation must be paid. Compensation will, therefore, be payable in certain cases where *ante*-1869 licenses are taken away, where it would not be payable in the case of other licenses. For instance, compensation would be payable if an *ante*-1869 license is taken away on the ground that the premises are structurally deficient.

(n) This proviso introduces a special provision as regards counties where, although there is only one commission of the peace, quarter sessions are held separately for various divisions. This is especially the case in Lancashire, Sussex, and Suffolk. The divisions for which separate quarter sessions are held can be ordered by the

Secretary of State to be treated as separate counties for the purposes of the Act. **Sect. 9.**

(o) That is August 15th, 1904.

NOTE (n).

(p) Sections 4 and 14 of the Alehouse Act, 1828, are set out in the Appendix.

10. *Short title, construction, and commencement.*]

(1) This Act may be cited as the Licensing Act, 1904, and may be cited and shall be construed as one with the Licensing Acts, 1828 to 1902 (a).

(2) This Act shall come into operation on the first day of January nineteen hundred and five.

(3) This Act shall not extend to Scotland or Ireland.

(a) By the Short Titles Act, 1896 (56 & 57 Vict. c. 14), the following Acts are known by the collective title of the Licensing Acts, 1828 to 1886: The Alehouse Act, 1828 (9 Geo. 4, c. 61); the Beerhouse Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 64); the Beerhouse Act, 1834 (4 & 5 Will. 4, c. 85); the Beerhouse Act, 1840 (3 & 4 Vict. c. 61); the Licensing Act, 1842 (5 & 6 Vict. c. 44); the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27); the Wine and Beerhouse Act Amendment Act, 1870 (33 & 34 Vict. c. 29); the Beerhouse Act, 1870 (33 & 34 Vict. c. 111); the Licensing Act, 1872 (35 & 36 Vict. c. 94); the Licensing Act, 1874 (37 & 38 Vict. c. 49); the Beer Dealers Retail Licenses Act, 1880 (43 Vict. c. 6), (now repealed); the Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61); the Beer Dealers Retail Licenses (Amendment) Act, 1882 (45 & 46 Vict. c. 34) (now repealed); the Licensing (Evidence) Act, 1884 (47 & 48 Vict. c. 29); and the Intoxicating Liquors (Sale to Children) Act, 1886 (49 & 50 Vict. c. 56) (now repealed). The Licensing Act, 1902 (2 Edw. 7, c. 28), is to be construed as one with the Licensing Acts, 1828 to 1886. By virtue of s. 2 (2) of the Short Titles Act, 1896, the Licensing Act, 1902, became included under the title of Licensing Acts, 1828 to 1902. And, further, the effect of this sub-section (s. 10 (1), and s. 2 of the Short Titles Act, 1896, is to enable the Licensing Acts to be cited in future as the Licensing Acts, 1828 to 1904.

The construction of this Act, with the Licensing Acts, incorporates the necessary machinery for working it out. Where two or more Acts are to be construed together, "we must construe every part of each of them as if it had been one Act, unless there is some manifest discrepancy, making it necessary to hold that the later Act has to some extent modified something found in the earlier Act" (Lord SELBORNE, L.C., in *Canada Southern Rail. Co. v. International Bridge Co.* (1883), 8 App. Cas., p. 727).

Sched. 1.

SCHEDULES.

SCHEDULE I.

[Section 3.

SCALE OF MAXIMUM CHARGES.

(Ante, p. 26.)

| Annual Value of Premises to be taken as for the purpose of the Publicans' License Duty. | | | | | | Maximum Rate of Charge. |
|---|-----------|-----|---|---|---|-------------------------|
| £ | Under | £ | - | - | - | £ s. d. |
| 15 | and under | 20 | - | - | - | 1 0 0 |
| 20 | " " | 25 | - | - | - | 2 0 0 |
| 25 | " " | 30 | - | - | - | 3 0 0 |
| 30 | " " | 40 | - | - | - | 4 0 0 |
| 40 | " " | 50 | - | - | - | 6 0 0 |
| 50 | " " | 100 | - | - | - | 10 0 0 |
| 100 | " " | 200 | - | - | - | 15 0 0 |
| 200 | " " | 300 | - | - | - | 20 0 0 |
| 300 | " " | 400 | - | - | - | 30 0 0 |
| 400 | " " | 500 | - | - | - | 40 0 0 |
| 500 | " " | 600 | - | - | - | 50 0 0 |
| 600 | " " | 700 | - | - | - | 60 0 0 |
| 700 | " " | 800 | - | - | - | 70 0 0 |
| 800 | " " | 900 | - | - | - | 80 0 0 |
| 900 | and over | - | - | - | - | 90 0 0 |
| | | | | | | 100 0 0 |

The rate of charge in the case of an hotel or other premises to which sub-section (4) of section forty-three of the Inland Revenue Act, 1880 (*a*), applies shall be one-third of that charged in other cases, and, in the case of any licensed premises which are certified by the justices of the licensing district on the application of the holder of the license to be used only as public gardens, picture galleries,

(*a*) By the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), s. 43 (4)—
 "Where in the case of premises of the value of fifty pounds or upwards it shall be proved to the satisfaction of the Commissioners that the premises are structurally adapted for use as an inn or hotel for the reception of guests and travellers desirous of dwelling therein, and are mainly so used, the amount of duty to be paid on a license to retail spirits shall not exceed twenty pounds: Provided that the relief under this sub-section shall not be given in case any portion of the premises is set apart and used as an ordinary public house for the sale and consumption therein of liquors, and the annual value of such portion, in the opinion of the Commissioners, exceeds twenty-five pounds."

exhibitions, places of public or private entertainment, railway refreshment rooms, bonâ fide restaurants or eating houses, or for any other purpose to which the holding of a license is merely auxiliary, such rate, not less than one-third of that charged in other cases, as the justices think proper under the circumstances. **Sched. 1.**

SCHEDULE II.

[Section 3.

SCALE OF DEDUCTIONS.

(Ante, p. 26.)

| | | | | |
|---|--------------------------------------|--------------------------------|---|---|
| A person whose unexpired term does not exceed - | } 1 year may deduct a sum equal to - | } 100 per cent. of the charge. | | |
| | 2 years | 88 | " | " |
| | 3 " | 82 | " | " |
| | 4 " | 76 | " | " |
| | 5 " | 70 | " | " |
| | 6 " | 65 | " | " |
| | 7 " | 60 | " | " |
| | 8 " | 55 | " | " |
| | 9 " | 50 | " | " |
| | 10 " | 45 | " | " |
| | 11 " | 41 | " | " |
| | 12 " | 37 | " | " |
| | 13 " | 33 | " | " |
| | 14 " | 29 | " | " |
| | 15 " | 25 | " | " |
| | 16 " | 23 | " | " |
| | 17 " | 21 | " | " |
| | 18 " | 19 | " | " |
| | 19 " | 17 | " | " |
| | 20 " | 15 | " | " |
| | 21 " | 14 | " | " |
| | 22 " | 13 | " | " |
| | 23 " | 12 | " | " |
| | 24 " | 11 | " | " |
| | 25 " | 10 | " | " |
| Exceeds 25 but does not exceed | } 30 " | 7 | " | " |
| 30 " | 35 " | 6 | " | " |
| 35 " | 40 " | 5 | " | " |
| 40 " | 45 " | 4 | " | " |
| 45 " | 50 " | 3 | " | " |
| 50 " | 55 " | 2 | " | " |
| 55 " | 60 " | 1 | " | " |

But the amount deducted shall in no case exceed half the rent.

APPENDIX.

ALEHOUSE ACT, 1828.

(9 GEO. 4, c. 61.)

AN ACT to regulate the granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England. [15th July 1828.]

[1.] *General licensing meetings to be held annually.—Time of holding such meetings.*] In every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county, not being within any such division, and in every liberty, division of every liberty, county of a city, county of a town, city, and town corporate, in that part of the United Kingdom called England, there shall be annually holden a special session of the justices of the peace (to be called the general annual licensing meeting), for the purpose of granting licenses to persons keeping or being about to keep inns, alehouses, and victualling houses, to sell excisable liquors by retail, to be drunk or consumed on the premises therein specified . . . ; and it shall be lawful for the justices acting in and for such county or place assembled at such meeting, or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licenses, for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper.

2. *Time and place of meeting how to be appointed.—Notice of meetings to be given.*] In every such division or place as aforesaid there shall be holden, twenty-one days at the least before each such general annual licensing meeting, a petty session of the justices acting for such county or place, the majority of whom then present shall, by a precept under their hands, appoint the day, hour, and place upon and in which such general annual licensing meeting for such division or place shall be holden, and shall direct such precept to the *high constable* of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order the several petty

Appndx. constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a license to sell excisable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice.

The precept of the justices is now (except in London and the Metropolitan Police district) directed to the justices' clerk (High Constables Act, 1869 (32 & 33 Vict. c. 47)).

3. *Adjournment of meetings.*] It shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license: Provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid. . . .

4. *Special sessions for transferring licenses to be appointed.*] The justices assembled at the general annual licensing meeting in every year, shall appoint not less than four nor more than eight special sessions to be holden in the division or place for which each such meeting shall be holden in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant, at which special session it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time hereinafter directed, to license such persons intending to keep inns theretofore kept by other persons being about to remove from such inns as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell excisable liquors by retail, to be drunk or consumed on the premises.

5. *Notice to be given of the adjournment of the general annual licensing meeting, and of the appointment of special sessions.*] Whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such

special sessions as aforesaid, the day, hour, and place for holding every such adjourned meeting and every such special session shall be appointed by precept of the majority of the said justices directed to the *high constable*, requiring notices, similar in form to those given at the general annual licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties. Appndx.

* * * * *

9. *Questions respecting licenses to be determined, and licenses to be signed, by the majority of justices at the meeting.*] When (at any of the meetings aforesaid) any question touching the granting, withholding, or transferring any license, or the fitness of the person applying for such license, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices not disqualified who shall be present when such question shall arise; and every license granted under the authority of this Act shall be signed by the majority of the justices not disqualified who shall be present when such license shall be granted.

* * * * *

12. *Any person hindered from attending any licensing meeting by sickness may authorise another person to attend for him.*] If any person intending to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any license to be granted under the authority of this Act, or for the transfer of any such license, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant or transfer such license to such person so hindered from attending, and to deliver the same to any person then present who shall be duly authorised by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause.

13. *Duration of license.*] Every license which shall be granted under the authority of this Act . . . shall be in force . . . from the fifth day of April . . . , after the granting thereof, for one whole year thence *respectively* next ensuing, and no longer; and every license for the purposes aforesaid which shall be granted at any other time or place . . . except as hereinafter excepted, shall not entitle any person to obtain an excise license for selling excisable liquors by retail to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes.

Appndx. 14. *Provision for transfer of license in case of death, bankruptcy, change of occupancy, destruction of licensed premises, or other contingency—Duration of license granted in event of such contingency—Notices required.*] If any person duly licensed under this Act shall (before the expiration of such license) die, or shall be by sickness or other infirmity rendered incapable of keeping an inn, or shall become bankrupt . . . ;

Or if any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such license ;

Or if the occupier of any such house, being about to quit the same, shall have wilfully omitted or shall have neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a license to continue to sell excisable liquors by retail, to be drunk or consumed in such house ;

Or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any Act for the improvement of the highways or for any other public purpose ;

Or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn ;

It shall be lawful for the justices assembled as aforesaid at a special session holden under the authority of this Act for the division or place in which the house so kept or having been kept shall be situate, in any one of the above-mentioned cases, and in such cases only,

To grant to the heirs, executors, or administrators of the person so dying,

Or to the assigns of such person becoming incapable of keeping an inn,

Or to the assignee or assignees of such bankrupt . . . ,

Or to any new tenant or occupier of any house having so become unoccupied,

Or to any person to whom such heirs, executors, administrators, or assigns shall by sale or otherwise have bonâ fide conveyed or otherwise made over his or their interest in the occupation and keeping of such house,

A license to sell excisable liquors by retail, to be drunk or consumed in such house or the premises thereunto belonging ;

Or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways or for any other public purpose, or have become unfit for the reception of travellers or for the other legal purposes of an inn, and who shall open and keep as an inn some other fit and convenient house,

A license to sell excisable liquors by retail, to be drunk or consumed therein :

Provided always, that every such license shall continue in force only from the day on which it shall be granted until the fifth day of April . . . then next ensuing : . . . Appndx.

Provided also, that every person intending to apply, in any of the above-mentioned cases, at any such special session, for a license to sell excisable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging in which excisable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a license granted at the general annual licensing meeting next before such special session, shall, on some one Sunday within the six weeks next before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel on some other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a license to sell excisable liquors by retail, to be drunk or consumed in a house not theretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor and on one of the constables or other peace officers of such parish or place.

15. *Fees to be paid for licenses—Penalty for taking larger fees.*] It shall be lawful for the clerk of the justices, as well at the general annual licensing meeting as also at any special session to be holden under this Act, to demand and receive from every person to whom a license shall be granted under this Act, for the trouble of such clerk, and for all expenses connected therewith, the sums following and no more ; videlicet,—

For the petty constable or other peace officer, for serving notices, and for all other services hereby required of such petty constable or other peace officer, the sum of one shilling ;

For the clerk of the justices, for the license, the sum of five shillings ;

And for preparing the precepts to be directed to the high constable, and notices to be delivered by the petty constable, as required by this Act, the sum of one shilling and sixpence ;

And every such clerk who shall demand or receive from any person for such respective fees in this behalf any greater sum or anything of greater value than the sums hereinbefore specified, being in the whole the sum of seven shillings and sixpence, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds.

Appndx. 27. *Appeal may be made to the quarter sessions—Judgment of the quarter sessions to be final.*] Any person who shall think himself aggrieved by any act of any justice done in or concerning the execution of this Act may appeal against such act to the next general or quarter sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards, provided that such person shall give to such justice notice in writing of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a recognizance, with two sufficient sureties, before a justice acting in and for such county or place as aforesaid, conditioned to appear at the said session, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded ;

And upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody for any offence in reference to which the act intended to be appealed against shall have been done ;

And the court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet ;

And in case the act appealed against shall be the refusal to grant or to transfer any license, and the judgment under which such act was done be reversed, it shall be lawful for the said court to grant or to transfer such license in the same manner as if such license had been granted at the general annual licensing meeting, or had been transferred at a special session, and the judgment of the said court shall be final and conclusive to all intents and purposes ;

And in case of the dismissal of such appeal or of the affirmance of the judgment on which such act was done and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall, if necessary, issue process for enforcing such order :

Provided that no justice shall act in the hearing or determination of any appeal to the general or quarter sessions as aforesaid from any act done by him in or concerning the execution of this Act :

Provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city, or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained.

28. *Justices to bind parties to appear to give evidence at quarter sessions.*] When any person shall have given notice of his intention

to appeal as aforesaid, and shall have entered into recognizance as hereinbefore directed, it shall be lawful for the justice before whom such recognizance shall have been entered into to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognizance to appear at the said general or quarter session, and to give evidence in such appeal; and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law.

29. *Court to adjudge costs of justices in certain cases.*] In every case where notice of appeal against the judgment of any justice in or concerning the execution of this Act shall have been given, and such appeal shall have been *dismissed*, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party so having appealed, or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum by way of costs as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal;

And if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid;

And in every case in which the judgment so appealed against shall be *reversed* it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place in and for which such justice whose judgment shall have been so reversed shall have acted on the occasion when he shall have given such judgment shall pay to such justice, or to whomsoever he shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts.

Appndx.

BEERHOUSE ACT, 1840.

(3 & 4 VICT. c. 61.)

AN ACT to amend the Acts relating to the general Sale of Beer and Cider by Retail in England. [7th August 1840.]

11 Geo. 4 & 1 Will. 4, c. 64—4 & 5 Will. 4, c. 85—*License to retail beer not to be granted to any but the real resident occupier, nor in respect of any house rated at less than £15 per annum, within the Bills of Mortality, or in cities, towns, etc., containing 10,000 inhabitants; nor less than £11 per annum in places exceeding 2,500 inhabitants; nor less than £8 per annum in places situated elsewhere.* . . . No license to sell beer or cider by retail under the said recited Acts or this Act shall be granted to any person who shall not be the *real resident holder and occupier* of the dwelling-house in which he shall apply to be licensed; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of fifteen pounds per annum at the least, if situated in the cities of London or Westminster, or within any parish or place within the Bills of Mortality, or within any city, cinque port, town corporate, parish, or place, the population of which according to the last parliamentary census shall exceed ten thousand, or within one mile, to be measured by the nearest public street or path, from any polling place used at the last election for any town having the like population, and returning a member or members of Parliament; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of eleven pounds per annum, if situated within any city, cinque port, town corporate, parish, or place, the population of which according to the last parliamentary census shall exceed two thousand five hundred and shall not exceed ten thousand, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of Parliament; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of eight pounds, if situated elsewhere than as aforesaid; and every license granted contrary hereto shall be null and void.

* * * * *

WINE AND BEERHOUSE ACT, 1869.

Appndx.

(32 & 33 VICT. c. 27.)

AN ACT to amend the law for licensing Beerhouses, and to make certain alterations with respect to the Sale by retail of Beer, Cider, and Wine.
[12th July 1869.]

WHEREAS by the Acts relating to the general sale of beer and cider by retail in England ; (that is to say,)

(1) An Act of 11 Geo. 4 & 1 Will. 4, c. 64 ;

(2) An Act of 4 & 5 Will. 4, c. 85 ;

(3) An Act of 3 & 4 Vict. c. 61 ;

(4) An Act of 24 & 25 Vict. c. 21 ;

provision is made for the grant of licenses by the excise for the sale by retail of beer and cider upon the terms and conditions therein specified :

And whereas by an Act of 26 & 27 Vict. c. 33, it is enacted, that any person who after the passing of that Act has taken out an excise license to sell strong beer in casks containing not less than four and a half gallons, or in not less than two dozen reputed quart bottles, at one time, to be drunk or consumed elsewhere than on his premises, may take out an additional license on payment of the excise duties therein mentioned, and that the same shall authorise such person to sell beer in any less quantity and in any other manner as aforesaid, but not to be drunk or consumed on the premises where sold, and that such additional license shall be granted without the production of any certificate, or the possession of any other qualification than the license therein first mentioned :

And whereas provision is made for the grant of licenses by the excise for refreshment houses and for the sale of wine by retail, and for other purposes by an Act of 23 & 24 Vict. c. 27 :

And whereas it is expedient to make better provision with regard to the granting of the licenses hereinbefore mentioned, and for regulating the houses and shops in which beer, cider, and wine are sold by retail :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : (that is to say,)

* * * * *

7. *Notice of application.*] Every person intending to apply to the justices for a certificate under this Act shall, twenty-one days at least before he applies, give notice in writing of his intention to one of the overseers of the parish, township, or place in which the house or shop in respect of which his application is to be made is

Appndx. situate, and to [*the superintendent of police of the district*], and shall in such notice set forth his name and address, and a description of the license or licenses for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made; and in the case of a house or shop not theretofore licensed for the sale by retail of beer, cider, or wine, such person shall also within the space of twenty-eight days before such application is made cause a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or, if there be no such church or chapel, on some other public and conspicuous place within such parish or place.

Where application is made to the justices for the grant of a certificate under this Act by way of *renewal* only, notice in pursuance of this section shall not be requisite.

* * * * *

WINE AND BEERHOUSE AMENDMENT ACT, 1870.

(33 & 34 VICT. c. 29.)

AN ACT to amend and continue the Wine and Beerhouse Act, 1869.
[14th July 1870.]

BE it enacted, etc., as follows :

* * * * *

4. *Amendment of provisions of principal Act as to grants, durations, and transmissions of certificate.*] The provisions of the principal Act, with reference to the grant, duration, and transmission of certificates, shall be amended as follows; (that is to say),

- (1) The seventh section of the principal Act shall be read as if for the words "constable or peace officer acting within such parish, township, or place," there were substituted the words "the superintendent of police of the district," and the notice required by that section to be given to any overseer or constable may be served by a registered letter through the post :
- (2) where a certificate is now required to be signed by a majority of justices, it shall be sufficient if, instead of such signature, the concurrence of such majority be signified by means of an impression from an official seal or stamp, in such form as the justices may direct, affixed in the presence of the

justices in sessions assembled, and verified in the case of each certificate by the signature of their clerk. Any seal purporting to be so affixed and verified shall be received in evidence without further proof; and if any unauthorised person imitate or affix an impression of such seal on any certificate or imitation of a certificate, or knowingly use a certificate or imitation of a certificate falsely purporting to be sealed in pursuance of this section, he shall be guilty of forgery :

- (3) For every certificate granted by way of renewal under the principal Act or this Act, there shall be payable to the clerk of the justices the sum of four shillings for all matters to be done by such clerk, and one shilling for the constable or officer for service of notices; and if any clerk of justices demand or receive any greater or further fee or payment in respect of any such renewal, whether for himself or for any other officer or person, he shall, upon summary conviction, be liable to a penalty of five pounds :
- (4) It shall be in the discretion of the justices to whom an application for a transfer is made, either to allow or refuse the application, or to adjourn the consideration thereof :
- (5) . . . Subject to the provisions of this section, all the provisions of the Alehouse Act, 1828, and Acts amending the same, relating to the time for which justices' licenses are to be in force, and relating to the fees payable for such licenses, and relating to the transfer, removal, and transmission of such licenses, and the grant of licenses upon assignment, death, change of occupancy, or other contingency, and relating to copies of such licenses, and relating to grants or transfers of such licenses without the attendance of an applicant who is hindered by sickness, infirmity, or other reasonable cause, shall have effect with regard to certificates granted or to be granted under the principal Act and this Act.

* * * * *

10. *As to beer dealer's additional retail license.*] A certificate for an additional license to the holder of a strong beer dealer's license to retail beer under the provisions of the Revenue Act, 1863 (26 & 27 Vict. c. 33), shall not except by way of renewal from time to time of a certificate in force at the time of the passing of this Act, be granted unless upon the like proof of qualification according to rating as is required in the case of licenses to retail beer for consumption on the premises under the provisions of the Acts recited in the principal Act for permitting the general sale of beer and cider by retail in England.

11. *Power to justices to postpone applications for grants of renewals.*] Where any applicant for the grant or renewal of a certificate has,

Appndx. through inadvertence or misadventure, failed to comply with any of the preliminary requirements of the principal Act or this Act, or any Act incorporated therewith, the justices may, if they shall so think fit, and upon such terms as they think proper, postpone the consideration of the application to an adjourned meeting and if at such adjourned meeting the justices shall be satisfied that such terms have been complied with, they may proceed to grant or withhold such certificate as if the preliminary requirements of the principal Act had been complied with.

* * * * *

LICENSING ACT, 1872.

(35 & 36 VICT. c. 94.)

AN ACT for regulating the Sale of Intoxicating Liquors.

[10th August 1872.]

* * * * *

40. *Regulations as to new licenses and transfer of licenses.*] Every person intending to apply for a new license, or to apply for the transfer of a license, shall publish notice of such application as follows; that is to say,

- (1) In the case of a new license, he shall cause notice thereof to be given and to be affixed and maintained in manner directed by section seven of the Wine and Beerhouse Act, 1869, and any enactment amending the same, and shall advertise such notice in some paper circulating in the place in which the premises to which the notice relates are situate, on some day not more than four and not less than two weeks before the proposed application, and on such day or days, if any, as may be from time to time fixed by the licensing justices:
- (2) In the case of the transfer of a license he shall, fourteen days prior to one of the special sessions appointed by the justices for granting transfers of such licenses, serve a notice of his intention to transfer the same upon one of the overseers of the parish, township, or place in which the premises in respect of which his application is to be made are situate, and on the superintendent of police of the district. This notice shall be signed by the applicant or by his authorised agent, and shall set forth the name of the person to whom it is intended that such license shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice:

- (3) Any license may be authenticated in manner in which a certificate may be authenticated in pursuance of sub-section two of section four of the Wine and Beerhouse Act Amendment Act, 1870, and the provisions of the said sub-section shall apply accordingly. Appndx.

The provisions of this section as to notices shall extend to all cases where, under the Alehouse Act, 1828, notices are required to be served in a like form to or in the same manner as notices for new licenses.

* * * * *

42. *Provisions as to renewal of licenses.*] Where a licensed person applies for the renewal of his license the following provisions shall have effect :

- (1) He need not attend in person at the general annual licensing meeting, unless he is required by the licensing justices [for some special cause personal to himself] so to attend :
- (2) The justices shall not entertain any objection to the renewal of such license, or take any evidence with respect to the renewal thereof, unless written notice of an intention to oppose the renewal of such license [and stating in general terms the grounds of opposition] has been served on such holder not less than seven days before the commencement of the general annual licensing meeting : Provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day, when the case will be heard and the objection considered, as if the notice hereinbefore prescribed had been given :
- (3) The justices shall not receive any evidence with respect to the renewal of such license which is not given on oath.

Subject as aforesaid, licenses shall be renewed and the powers and discretion of justices relative to such renewal shall be exercised as heretofore.

43. *Confirmation of licenses.*] Any person who appears before the licensing justices and opposes the grant of a new license, and no other person may appear and oppose the confirmation of such grant by the confirming authority in counties or boroughs : and the confirming authority may award such costs as they shall deem just to the party who shall succeed in the proceedings before them. In a county the justices in quarter sessions assembled, and in a borough the borough justices, [and in cases where a joint committee is appointed, then the joint committee] shall make rules as to the proceedings to be adopted for confirmation of new licenses and the

Appndx. costs to be incurred in any such proceedings, and the person by whom such costs are to be paid.

* * * * *

45. *Qualification of premises for licenses.*] Premises to which at the time of the passing of this Act no license under the Acts recited in the Wine and Beerhouse Act, 1869, authorising the sale of beer or wine for consumption thereupon is attached, shall not be subject to any of the provisions now in force prescribing a certain rent or value or rating as a qualification for receiving any such license.

Premises not at the time of the passing of this Act licensed for the sale of any intoxicating liquor for *consumption thereupon* shall not be qualified to receive a license authorising such sale unless the following conditions are satisfied :

(a) The premises, unless such premises are a railway refreshment room, shall be of not less than the following annual value :

If situated within the city of London or the liberties thereof, or any parish or place subject to the jurisdiction of the Metropolitan Board of Works, or within the four mile radius from Charing Cross, or within the limits of a town containing a population of not less than *one hundred thousand* inhabitants, *fifty* pounds per annum ; or if the license do not authorise the sale of spirits, *thirty* pounds per annum :

If situated elsewhere and within the limits of a town containing a population of not less than *ten thousand* inhabitants, *thirty* pounds per annum ; or if the license do not authorise the sale of spirits, *twenty* pounds per annum :

If situated elsewhere and not within any such town above mentioned, *fifteen* pounds per annum ; or if the license do not authorise the sale of spirits, *twelve* pounds per annum :

(b) The premises shall be, in the opinion of the licensing authority, structurally adapted to the class of license for which a certificate is sought : Provided that no house, not licensed at the time of the passing of this Act for the sale of any intoxicating liquor for consumption on the premises shall be qualified to have a license attached thereto authorising such sale, unless such house shall contain, exclusive of the rooms occupied by the inmates of such house, if the license authorise the sale of spirits, two rooms, and if the license do not authorise the sale of spirits, one room, for the accommodation of the public.

46. *Annual value necessary for obtaining grant of license.*] Whereas in certain cases a license under the Wine and Beerhouse Acts, 1869 and 1870, is not to be granted unless the house and premises in respect of which such license is granted are of such rent and value or are rated to the poor rate on a rent or annual value of such

amount as is respectively in that behalf stated in the Acts recited in the Wine and Beerhouse Act, 1869 ; and it is expedient to substitute in such cases "annual value" for the said rent, value, or rating, and to provide for the ascertaining the annual value of such house and premises : Be it therefore enacted that in cases not provided for by the last preceding section—

Appndx.

A license under the Wine and Beerhouse Acts, 1869 and 1870, shall not be granted in respect of any premises which are not, in the opinion of the licensing justices who grant such license, of such annual value as is mentioned in that behalf in the Acts recited by the Wine and Beerhouse Act, 1869 ; and those Acts shall be construed as if "annual value" were therein substituted for "rent," "value," "rated on a rent or annual value," and other like expressions. . . .

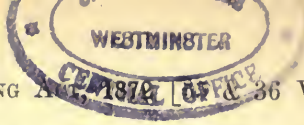
47. *Mode of ascertaining annual value.*] The licensing justices shall take such means as may seem to them best for ascertaining the annual value of any premises for the purposes of this Act, and may, if they think fit, order a valuation to be made of such premises by a competent person appointed by them for the purpose, and may order the costs of such valuation to be paid by the applicant for a license.

The annual value of premises for the purposes of this Act shall be the annual rent which a tenant might be reasonably expected, taking one year with another, to pay for the same, if he undertook to pay all tenant's rates and taxes, and tithe commutation rent-charge (if any), and if the landlord undertook to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the premises in a state to command the said rent, and if no license were granted in respect thereof ; but no land shall be included in such premises other than any pleasure grounds or flower or kitchen garden, yard, or curtilage usually held and occupied and used by the persons residing in and frequenting the house.

* * * * *

53. *Continuance of license during pendency of appeal against justices refusal to renew.*] Where the justices refuse to renew a license, and an appeal against such refusal is duly made, and such license expires before the appeal is determined, the Commissioners of Inland Revenue may, by order, permit the person whose license is refused to carry on his business during the pendency of the appeal upon such conditions as they think just ; and, subject to such conditions, any person so permitted may, during the continuance of such order, carry on his business in the same manner as if the renewal of the license had not been refused.

Where a license is forfeited on or in pursuance of a conviction for an offence, and an appeal is duly made against such conviction, the



Appndx.

court by whom the conviction was made, may by order, grant a temporary license to be in force during the pendency of the appeal upon such conditions as they think just.

* * * * *

Miscellaneous.

60. *Disqualification of justices to act under this Act.*] No justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Licensing Acts, except in cases where the offence charged is that of being found drunk in any highway or other public place, whether a building or not, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam engine, or of being drunk when in possession of loaded firearms, who is or is in partnership with or holds any share in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which such justice usually acts; and no justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Acts, in respect of any premises in the profits to (*sic*) which such justice is interested, or of which he is wholly or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent.

Any justice hereby declared not to be qualified to act under this Act who knowingly acts as a justice for any of the purposes of this Act shall for every such offence be liable to a penalty not exceeding one hundred pounds, to be recovered by action in one of her Majesty's superior courts at Westminster :

Provided that—

- (1) No justice shall be disqualified under this section to act in respect of any premises by reason of his having vested in him a legal interest only, and not a beneficial interest, in such premises or the profits thereof :
- (2) No justice shall be liable to a penalty for more than one offence committed by him under this section before the institution of any proceedings for the recovery of such penalty :
- (3) No act done by any justice disqualified by this section shall by reason only of such disqualification be invalid.

* * * * *

LICENSING ACT, 1874.

Appndx.

(37 & 38 VICT. c. 49.)

An Act to amend the Laws relating to the Sale and Consumption of Intoxicating Liquors. [30th July 1874.]

* * * * *

26. *Notices of adjourned brewster sessions and of intention to oppose.*] Whereas by section forty-two of the principal Act it is enacted that a licensed person applying for the renewal of his license need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend : Be it enacted, that such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent.

It shall not be necessary to serve copies of notices of any adjournment of a general annual licensing meeting on holders of licenses or applicants for licenses who are not required to attend at such adjourned annual general licensing meeting.

A notice of an intention to oppose the renewal of a license served under section forty-two of the principal Act shall not be valid unless it states in general terms the grounds on which the renewal of such license is to be opposed.

* * * * *

LICENSING ACT, 1902.

(2 EDW. 7, c. 28.)

An Act to amend the Law relating to the Sale of Intoxicating Liquors and to Drunkenness, and to provide for the Registration of Clubs. [8th August 1902.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

Amendment of Law as to Drunkenness.

* * * * *

14. *Date of annual licensing meeting.*] (1) The general annual licensing meeting in every licensing district shall be held within the first fourteen days of the month of February in each year, and every

Appndx. adjournment thereof shall be held within one month of the date of the general annual licensing meeting.

(6) This section shall not affect the power of the licensing justices, under section eleven of the Wine and Beerhouse Act, 1870, to postpone to an adjourned meeting (whether held within one month of the date of the annual meeting or not) the consideration of an application for the grant or renewal of a license; and the said section shall apply to all licenses in like manner as it applies to licenses under the Wine and Beerhouse Acts.

* * * * *

16. *Provisions as to transfer.*] (1) In the case of an application for a license under section four or section fourteen of the Alehouse Act, 1828, the person holding the license and the person who it is proposed shall become the holder of the license shall attend at the special sessions at which the application is heard, and the agreement or other assurance, if any, under which the license is to be transferred and held shall be produced to the licensing justices; and, for the purpose of compelling the attendance of any such person, or any witness, the licensing justices shall have all the powers of a court of summary jurisdiction.

Provided that the licensing justices may, for good cause shown in any particular case, dispense with the attendance of either of such persons, or both.

(2) For the purpose of preventing repeated applications, the licensing justices may, at the general annual licensing meeting, make regulations determining the time which must elapse after the hearing of one application for a license, under section four or section fourteen of the Alehouse Act, 1828, before another application, under the said sections, or either of them, may be made in respect of the same premises. Provided that the justices may, in their discretion, for good cause shown, dispense with the observance of these regulations in any particular case.

(3) The provisions of sub-section two of section forty of the Licensing Act, 1872, as to notices of intention to transfer, shall apply to all cases of applications under section four or section fourteen of the Alehouse Act, 1828.

(4) The provisions of sub-section four of section four of the Wine and Beerhouse Act, 1870, with respect to the adjournment of an application for a transfer, shall apply to all licenses in cases arising under section four or section fourteen of the Alehouse Act, 1828; and, where any such application is adjourned, and there is in force an authority granted under the Licensing Act, 1842, to sell intoxicating liquor on the licensed premises, such authority shall continue in force till the hearing of the adjourned application, and the proper officer of Inland Revenue may give the like authority by indorsement on the excise license.

* * * * *

RULES UNDER FINANCE ACT, 1894, s. 10.

(See, *ante*, p. 25, note (k).)

The following Rules regulating appeals to the High Court have been issued :

ENGLAND. Dated 14th January, 1895. St. R. & O. [1895], No. 11 (L. 1).

1. Any aggrieved person within the meaning of section 10, sub-section (1) of the Finance Act, 1894, who desires to appeal to the High Court in any of the cases mentioned in the said sub-section shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.

The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property and state the value which he contends should be put upon the same.

2. The Commissioners shall, within a month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against or have determined to maintain the same, either in whole or in part.

3. At any time thereafter not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim either in whole or in part, the appellant may proceed with his appeal by way of petition to the High Court, such petition to be filed in the Queen's Remembrancer's Department of the Central Office, and a copy thereof served by the appellant upon the Commissioners.

4. Subject to the provisions of these Rules the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal.

5. Upon the filing of the petition and the service of a copy thereof upon the Commissioners, the matter shall be deemed to be completely at issue, and within seven days thereafter the appellant, or in default thereof the Commissioners, may set the petition down for hearing upon the Revenue side of the Queen's Bench Division of the High Court.

6. The Court or a Judge may order that the petition shall be heard before a Judge of the Chancery Division, and Order XLIX., Rule 7, shall apply to any such Order.

Appndx. 7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

8. In cases where pursuant to Rule 7 evidence may be by affidavit, the affidavits shall be filed in the Queen's Remembrancer's Department.

9. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents.

10. The Court or a Judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the Court or Judge may think right.

11. Order XIX. Rule 27 of the Rules of the Supreme Court, 1883, shall apply to the petition which shall be deemed to be a pleading within that Rule.

12. Applications for leave to bring an appeal without payment, or on part payment only of the duty, under the provisions of the 4th sub-section of the 10th section of the Finance Act, 1894, shall be by summons before a Judge at Chambers, and the appellant shall deliver to the Commissioners, with the summons, a copy of any affidavit which the appellant intends to use at the hearing of the summons.

13. These Rules may be cited as the Rules of the Supreme Court (Finance Act), 1895, and shall come into operation forthwith.

COUNTY BOROUGHES.

Appndx.

ENGLAND.

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|---------------------|--------------------|
| Barrow-in-Furness. | Leicester. |
| Bath. | Lincoln. |
| Birkenhead. | Liverpool. |
| Birmingham. | Manchester. |
| Blackburn. | Middlesborough. |
| Bolton. | Newcastle-on-Tyne. |
| Bootle. | Newport (Mon.). |
| Bournemouth. | Northampton. |
| Bradford (Yorks.). | Norwich. |
| Brighton. | Nottingham. |
| Bristol. | Oldham. |
| Burnley. | Oxford. |
| Burton. | Plymouth. |
| Bury. | Portsmouth. |
| Canterbury. | Preston. |
| Chester. | Reading. |
| Coventry. | Rochdale. |
| Croydon. | St. Helens. |
| Derby. | Salford. |
| Devonport. | Sheffield. |
| Dudley. | Southampton. |
| Exeter. | South Shields. |
| Gateshead. | Stockport. |
| Gloucester. | Sunderland. |
| Great Grimsby. | Walsall. |
| Great Yarmouth. | Warrington. |
| Halifax. | West Bromwich. |
| Hanley. | West Ham. |
| Hastings. | Wigan. |
| Huddersfield. | Wolverhampton. |
| Ipswich. | Worcester. |
| Kingston-upon-Hull. | York. |
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