

SESS. II.—1891.
NEW ZEALAND.

POLICE PROSECUTIONS UNDER "THE LICENSING
ACT, 1881."

(CORRESPONDENCE RELATIVE TO).

Return to an Order of the House of Representatives dated 30th January, 1891.

Ordered, "That there be laid before this House and be printed copy of correspondence between the Hon. the Minister of Justice and the Hon. Sir W. Fox, K.C.M.G., on the subject of prosecutions by the Police of licensed victuallers offending against the law; also, copy of correspondence between the Hon. the Minister of Justice and Bishop Cowie, as chairman of a public meeting held in Auckland, on the subject of the conduct of the police in that city."—(Hon. Sir. J. HALL.)

Inspector BROHAM, Auckland, to the COMMISSIONER of POLICE, Wellington.

SIR,—

Police Office, Auckland, 22nd May, 1889.

I have the honour to inform you that at the last annual licensing meeting here several licenses were issued to married women, notwithstanding my opposition. Since then the Court of Appeal has decided that married women cannot hold publicans' licenses. The same married women are also applying for licenses this year, and the licenses will probably be granted. Will you please state whether, in that case, the police should take action against the holders of the licenses, for, of course, the licenses issued will be null and void in law. This opens up the question how far the police should abide by the action of the Licensing Commissioners in other cases. It is well known that throughout the colony Licensing Commissioners do things every day contrary to the Licensing Act, but heretofore, so far as I know, the police have taken no steps to enforce the law against the decision of the Commissioners. I also find that some of the Road Boards here pass by-laws permitting cattle to stray upon public roads contrary to the Trespass of Cattle and Police Offences Acts. If the police continue to remain inactive in all cases where Licensing Commissioners and public bodies run counter to the law, the law, after a time, will be quite shadowed over by by-laws quite illegal, and decisions contrary not only to law but to all sense and reason.

I have, &c.,

T. BROHAM, Inspector.

There are about four hundred licensing districts in the colony, and each district returns five Commissioners every year to enforce the Act, or, say, two thousand for the entire colony.

To Inspector Broham.

I FEAR that the legality of this action on part of the Licensing Boards must be tested by prosecuting the women in question. It is very hard for them, but we must support the law.

27th May, 1889.

W. E. GUDGEON.

The Hon. Sir W. Fox to the Hon. the MINISTER of JUSTICE.

SIR,—

New Zealand Alliance Office, Auckland, 17th September, 1889.

By direction of the Council of the New Zealand Alliance for the Suppression of the Liquor Traffic, I have the honour to call your attention to a circumstance connected with the administration of the licensing laws which appears to require the intervention of your department. Cases have occurred more than once, and exist at this moment, in which licenses to sell intoxicating drinks have been granted by Licensing Committees apparently in direct defiance of law. For instance, where a local-option vote against any increase has been duly taken a Committee has afterwards deliberately granted a certificate for a new license, in excess of the existing number, and such license has been acted upon by the publican in whose behalf it was granted. In another case a license has been issued to a married woman, and, what made it worse, in a false name, apparently to conceal the fact of her coverture. In another case an extension of hours from 10 to 11 at night has been granted to several publicans to sell liquors at their houses because a flower-show

had during the day been going on in another place in the borough, altogether unconnected with any licensed house, and in no respect in conformity with the provisions of section 36. In all these cases the matter has been within cognisance of the police, who, when appealed to, have admitted the illegality of the cases and the liability of the parties to prosecution, but have declined to take action on the ground that they had instructions from head-quarters not to interfere. That is to say, they have been instructed to accept the production of a license as conclusive as to its validity, though personally they might know that it was invalid, and that offences against the law were being daily committed under its cover. This has actually occurred in various parts of the colony. But for such instructions, the police, it is believed, would have done their duty and brought the offenders to justice. Presuming that the head-quarters to which the police are responsible for thus declining to enforce the law means the office which you fill, the Alliance begs most respectfully to request that such instructions as have prevented the police from acting may be rescinded, and that the Force may be instructed, in all cases where illegal sales are being effected (or any other offence against the licensing laws is brought to their knowledge, such as Sunday trading, selling beyond licensed hours, giving drink to intoxicated persons, &c.), to take the necessary steps to bring the offenders to justice. If I am wrong in assuming that the instructions not to prosecute have emanated from your office, but that they have been issued by the Defence and Police Departments, I still beg respectfully to suggest that, being an interference with the course of justice and the operations of Acts of Parliament, your office is the one which ought to exercise control in the matter; if you think otherwise, will you oblige by sending this letter to the Defence or other department which is responsible.

I have, &c.,

WILLIAM FOX,

President of the New Zealand Alliance.

The Hon. the Minister of Justice.

Inspector BROHAM, Auckland, to the COMMISSIONER of POLICE, Wellington.

SIR,—

Police Office, Auckland, 5th October, 1889.

With reference to Sir William Fox's letter, attached, complaining of the conduct of the police in not prosecuting persons under the Licensing Act in certain cases, and stating that they, the police, have declined to take action on the ground that they have been instructed from head-quarters not to interfere, I have the honour to inform you that the first case Sir William alludes to—viz., one in which a Committee granted a certificate for a new license in excess of the existing number and in defiance of the local-option vote—must be the case of Jeremiah Kenny, to which the accompanying papers refer. Such a case, so far as I am aware, has never occurred in this district. The second evidently refers to the case of a Mrs. Corbett, for Sir William brought it under my notice just before the last annual licensing meeting. Mrs. Corbett has held a publican's license at Wairoa, near Papakura, for over six years; it was supposed she was a widow, but lately her husband, whose name is Hope, a drunken loafer, came to the district, and soon spread the fact abroad that he was her husband. He is not living with her. It then appeared that she had left the South Island to get away from this man, and had come to Wairoa and obtained the license in the name of a former deceased husband of hers. During the time she held the license she conducted the business in a most satisfactory manner. By my directions, the fact that Mrs. Corbett was a married woman, and the decision of the Court of Appeal with respect to married women holding licenses were brought under the notice of the Licensing Bench at the annual meeting by the local constable, but, notwithstanding, the Bench unanimously granted the license. The third case Sir William refers to—that of granting a permit to publicans to sell after hours—also occurred here. There was an annual flower-show at Newmarket a few weeks ago, and the Committee granted two publicans there authority to keep their houses open from the usual hour of closing—viz., 10 o'clock till 12 o'clock. The Committee fully believed they had power to do this. They had such power under the provincial licensing ordinances, but not under the present Licensing Act. No instructions, so far as I am aware, have ever been issued to the police from head-quarters not to interfere with the action of the Licensing Commissioners or prosecute in cases where licenses have been issued by them; but ever since the Act was passed the police have had great difficulty in such matters. Before the present Act was passed Resident Magistrates were the chairmen of all Licensing Benches; they knew the law thoroughly, and the law itself was then more simple. Now there are some fifteen hundred or two thousand men elected every year to perform the work formerly done by Resident Magistrates, and many of these are quite ignorant of their duties. It cannot be wondered at that they sometimes commit serious blunders. The question is, Are the police in every case in which Commissioners have issued licenses contrary to law to bring the matter before the Police Courts? My letter of the 22nd May last, No. 227, refers to the case of married women applying for licenses, and also raises the question as to how far the police should abide by the action of the Licensing Commissioners in all cases. In the same letter I likewise mentioned the fact that Road Boards are in the habit of framing by-laws contrary to the Trespass of Cattle and Police Offences Acts. You replied to my query with respect to the married women applying for licenses, but not to the other parts of my letter, from which I concluded that there was no intention to depart from the present practice. The question seems to me to be somewhat embarrassing. If the police interfered with the action of the Commissioners it would tend to degrade the Commissioners, and a feud must soon arise between them and the police: the legal costs to the Government in the way of prosecutions would be very great, for every case would be defended, and legal difficulties would arise at all points owing to the many imperfections in the Act. But, on the other hand, if the police do not interfere the law will be in time in a great measure shadowed over and set aside by the Commissioners.

I have, &c.,

Major Gudgeon, Commissioner of Police, Wellington.

T. BROHAM, Inspector.

The COMMISSIONER of POLICE to the Hon. Sir W. Fox.

SIR,— Police Department, Commissioner's Office, Wellington, 27th September, 1889.
I am directed by the Hon. the Defence Minister to acknowledge the receipt of your letter of the 17th instant, respecting the administration of the licensing laws throughout the colony, and, in reply, to inform you that the matter will receive attention.

The Hon. Sir William Fox,
President of the New Zealand Alliance, Auckland.

I have, &c.,
JAMES G. FOX,
(For Commissioner.)

The COMMISSIONER of POLICE, Wellington, to the Hon. Sir W. Fox.

SIR,— Police Department, Commissioner's Office, Wellington, 17th October, 1889.
With reference to your letter of the 17th instant, and my reply of the 27th ultimo, regarding the administration of the licensing laws, I am now instructed by the Hon. the Defence Minister to say it does not appear to be within the province of the police to dispute the legality of a license issued by competent authority. It is open to any person or body to test the question in the Supreme Court, and this seems to him the proper course to pursue in such cases as those to which you have drawn attention.

The Hon. Sir William Fox,
President of the New Zealand Alliance, Auckland.

I have, &c.,
W. E. GUDGEON, Commissioner.

The Hon. Sir W. Fox to the Hon. the MINISTER of JUSTICE.

New Zealand Alliance Office, 320, Victoria Arcade, Auckland,
26th October, 1889.

SIR,— Referring to the correspondence noted in the margin (Nos. 269 and 308), in the last letter of which I am informed by Commissioner Gudgeon that he is directed by you to say "That it does not appear to be within the province of the police to dispute the legality of a license, and that it is open to any person to test the question in the Supreme Court, and that such appears to be the proper course to pursue in such cases as those in which your intervention was requested," as no reasons are assigned for the decision arrived at, I have respectfully to request that you will reconsider the subject, and will give consideration to the reasons set forth in the enclosed memorandum, and which have influenced the Alliance in their opinion that it is the duty of the police to intervene in such cases.

The Hon. the Minister of Justice, Wellington.

I have, &c.,
WILLIAM FOX,
President, New Zealand Alliance.

MEMORANDUM.

1. THAT the Licensing Acts are essentially and intrinsically public Acts, passed for the protection of the public, and not for the benefit of any individual. They constitute and prohibit a very large number of offences which are the outcome of the sale of intoxicating drinks, and they provide remedies for a great number of things which might injuriously affect the public welfare. It has been found necessary to place the liquor traffic, "from the mash-tub to the prison," under the superintendence and control of the Justices of the Peace and the police. Provision is made in the colonial Acts, in a large number of specified cases, for the punishment of offenders by Justices of the Peace on the prosecution of the police, without the intervention of any private persons. By section 178 of the Act of 1881 it is expressly enacted that "It shall be the duties of the inspectors to enforce and superintend the carrying-out of this Act in every respect." The Government has never yet appointed such special inspectors as the Act certainly contemplated; but the Act also declared that, independently of these special inspectors, "Every chief police officer and every officer of police not below the grade of sergeant shall, by virtue of his office, be an inspector." It is clearly the duty of such officers to initiate and conduct all prosecutions under that Act. By another section (195) it is further enacted "That every offence under the Act shall be prosecuted, and every penalty enforced by the summary jurisdiction of Justices of the Peace, and that no conviction of a lower Court shall be removed by *certiorari* into any superior Court." It is clearly intended that the police should prosecute and the Justices of the Peace decide on every offence against the Act. In the cases specified in my previous letter the prosecutions would be for selling without a license. On production by the defendant of the spurious license, why should not the Justices decide on the evidence, whether it was spurious or not? What possible reason could there be for referring the complainant to the Supreme Court? The probable result would be that the Court would refuse to hear the cases, and tell the prosecutor to go to the tribunal appointed by the Act, "to carry it out in every respect," and if the prosecutor were, as you suggest, a private party, he would no doubt have to pay the costs of his unsuccessful appeal to the Supreme Court.

2. It is believed that the police have laid it down as a rule, when a license is produced, "not to go behind it," as the phrase is—that is, not to contest its validity, however apparent its defects may be; and it is believed that some Justices of the Peace have followed the same rule. There seems no reason for any such arbitrary rule. The two cases referred to in my previous letter of the extension of time at Newmarket, and the holding of a license by a married woman under a false name, are exactly in point. The facts of the illegality were quite apparent, and the proof in each case was in the hands of the police. In the one case the alleged extension was, on the face of it, *ultra vires*, and in the other the police had the woman's own confession to prove her coverture and false name. Why should not they prosecute, and the Justices of the Peace convict? The

failure to do so brings the Licensing Act into deserved discredit, and leads the public to regard the whole thing as a sham. A case occurred in Auckland a few days ago in which a tradesman was summoned by the police before the sitting Magistrates for obstructing the footpath in front of his shop by allowing packing-cases to remain on it. The defendant produced a "permit" from the Mayor authorising him to do it. But the Court "went behind this"—simply ignored it as *ultra vires*—and convicted the defendant, with a £1 penalty and costs. The extension of time granted at Newmarket by the Licensing Committee was equally *ultra vires*, and the defect apparent on the face of the permit. Why did the police and the Bench go behind the permit in one case and refuse to do so in the other?

3. At all events, if cases should occur which necessitated recourse to the Supreme Court, why should the duty of carrying them before that tribunal be imposed upon any private persons? Is it not more consistent with the spirit of the Act, and with the practice in innumerable other cases on other subjects where indictment in the Supreme Court is the remedy, that the police should get up the case, and the Crown Prosecutor to take it into the Court, and the Government be responsible for the work and cost? There seems no shadow of reason whatever for imposing on private persons the enforcement of this Act, which, as already noted, expressly provides for its "enforcement in every respect" by the Inspector of Police.

W. F.

Inspector BROHAM, Auckland, to the COMMISSIONER of POLICE, Wellington.

SIR,—

Police Office, Auckland, 5th November, 1889.

With reference to Sir William Fox's letter and memorandum of the 26th October, I have the honour to inform you that I have carefully considered Sir William's views, and would beg to state that in my opinion the department should, at times, take action against the decision of Licensing Commissioners, but only in important cases where the law was clear, and the Commissioners, well knowing what they were doing, deliberately set the law at defiance. The case of Jeremiah Kenny, mentioned in the attached papers, is one in point. In that case I think it was the duty of the police to prosecute. The Commissioners well knew what they were doing; they well knew that the Act did not intend to give them the power to grant Kenny a license, and yet they did so. It is much to be regretted that the Act is so defective that no steps can be taken to cancel the license. Sir William again refers to the case of the married woman, Mrs. Corbett, holding a license at Wairoa without being prosecuted by the police; but he could not be aware at the time he wrote that the law in respect to married women holding licenses has been altered by the Licensing Act Amendment Act of this year, clause 3 of which states that every married woman shall be looked upon as a *femme sole* for the purpose of holding a license. The police could, of course, take action against the two publicans at Newmarket for keeping their houses open up to 12 o'clock; but the Commissioners who gave the authority were clearly of opinion that they had the power to do so. The Commissioners had such power under the repealed Act, and many of them are still ignorant of the fact that the law has been altered. It does not appear to me that these were cases in which the police should interfere. Sir William also mentions the case of a man who had a permit from the Mayor being brought up by the police here for obstructing the footpath. In that case I was not aware the man held a permit until the charge was called on in Court. He obtained the permit under false pretences, well knowing the police would make inquiries from the Mayor which would expose him. He kept the fact of the permit being issued a secret until the case was called, thinking the Bench would dismiss it on this ground. The Mayor has no authority to grant a permit under the by-law in question; but still, in an isolated case, if he did so, and thereby misled an innocent man into the commission of an offence, I would not feel myself compelled to bring the case into Court.

I have, &c.,

Major Gudgeon, Commissioner of Police, Wellington.

THOMAS BROHAM, Inspector.

Inspector THOMPSON, Oamaru, to the COMMISSIONER of CONSTABULARY, Wellington.

SIR,—

Constabulary Office, Oamaru, 14th June, 1886.

I have the honour to report for your information that in the early part of last year the determination of the ratepayers in the Waiareka Licensing District was taken, in the manner provided by sections 45 to 49 of "The Licensing Act, 1881," on the question as to whether the number of licenses held under the Act should or should not be increased. The result was a majority of one voted against an increase of accommodation licenses, of four against an increase of publicans' licenses, and of fourteen against an increase of bottle licenses. At the annual licensing meeting of the Licensing Committee held in June, 1885, after the votes were taken, a man named Jeremiah Kenny sent in an application asking for a publicans' or accommodation license, but the Committee declined to consider it because of the local-option vote being opposed to an increase. At the last election of members of this Licensing Committee Mr. Kenny nominated Messrs. George Henry Cox, William Falconer, John McLaren, Thomas Thompson, and Joseph Williams. The nomination was seconded; there was no opposition, and these gentlemen became members of the Committee. At the last annual meeting of the Committee there were present Messrs. Falconer (Chairman), Cox, McLaren, and Thompson. Mr. Kenny forwarded an application for an accommodation license, and when it came up for consideration I pointed out that it could not be granted in face of the votes given against an increase under the local-option clause of the Licensing Act. The Committee overruled the objection, and granted a certificate authorising the issue of a license. The matter has excited so large an amount of comment amongst the public and the Press here that I feel it my duty to place you in possession of the facts. I enclose extracts from the *Oamaru Mail* of the 8th

instant, giving a report of the proceedings of the meeting at which the certificate was granted, and of the 10th instant, giving the comments of the editor in a leading article on those proceedings.

I have, &c.,

ANDREW THOMPSON, Inspector.

The Commissioner of Constabulary, Wellington.

WAIAREKA LICENSING MEETING.

[Extracts from the *Oamaru Mail*, 10th June, 1886.]

THE licensing meeting for the Waiareka district took place at the Courthouse to-day, when there were present: Messrs. Falconer (Chairman), Cox, Thompson, and McLaren.

The police reported favourably upon all the houses, and renewals were granted to the following: Weston Hotel, Weston; Railway Hotel, Windsor; Railway Hotel, Ngapara; Terminus Hotel, Ngapara; and Teaneraki Hotel, Enfield.

A transfer of the license of P. O'Grady for the Railway Hotel, at Weston, was granted to P. Buckley.

An application was made by Mr. Butt for a new license for Jeremiah Kenny, Kenton, and he presented a petition in favour thereof signed by upwards of one hundred residents and travellers in the district.

Inspector Thompson submitted that the Committee could not entertain the application, seeing that the local-option vote taken in the district was averse to any new license being granted.

Mr. Butt submitted that Inspector Thompson could not point out any clause of the Act which would prevent the Committee from granting the license.

Inspector Thompson read the clauses relating to this matter, and submitted that this showed very clearly that the application could not be granted.

Mr. Butt said there was nothing to prevent the Committee granting the license if they thought fit to grant it. He meant there could be no penalties imposed upon them.

Inspector Thompson submitted that it was not a matter of penalties. He also submitted that the petition was not in accordance with the Act, as it did not say how far the persons who signed it lived from the house.

Mr. Butt submitted that this was not necessary, and he asked the Committee to hear Mr. Kenny.

Mr. Kenny was then heard in support. He stated that the local-option vote was not properly taken, inasmuch as it was not taken at Windsor, and the vote which was taken at Ngapara was corrupt.

Inspector Thompson said that it was now too late to upset the vote.

Mr. Thompson, Columella, one of the Committee, stated that he lived near to Mr. Kenny, and he testified as to the house being very necessary.

The Chairman did not think there was sufficient to warrant the Committee going in the face of the local-option vote, otherwise he could bear out his colleague Mr. Thompson's remarks about the house being necessary. He held that if they granted the license they went in opposition to the local-option vote.

The police reported favourably upon the house, but they stated that Mr. Kenny had been fined £40 for an illegal sale.

Inspector Thompson urged no objection to granting the license except the result of the local-option vote.

Mr. Kenny said that the license was granted to a house in Georgetown in opposition to the local-option vote.

The records were turned up and it was found that this was not the case, the local-option vote being in favour of an increase.

The Chairman said it rested with the Committee, and he would take the vote upon the question.

The question was put, when Messrs. Cox, Thompson, and McLaren voted that it be granted.

The Chairman said that he was in a minority even with his deliberative and casting vote, so he would fall in with the dictum of the majority.

The license was granted, and the fee fixed at £5.

The Committee also decided to grant licensees permission to extinguish their outside lights when their houses were closed.

Of the many strange acts performed by Licensing Committees that of the Waiareka Committee in granting the license of Jeremiah Kenny yesterday is the strangest. This was done in defiance of a local-option vote by which the people intimately interested determined that no new licenses were to be granted in their district. The proceedings at the meeting were of a most extraordinary character. Mr. Kenny presented a petition in favour of the license signed by upwards of a hundred residents and travellers in the district, and when Inspector Thompson contended that the license could not be legally granted in opposition to the local-option vote Mr. Butt, who appeared for the applicant, challenged the Inspector to point to any clause of the Act that would prevent the Committee from granting the license. The Inspector, with facility, demonstrated his view of the case. Then Mr. Butt explained that he meant that the Committee would not subject itself to any penalty if it granted the license. The Inspector said that it was not a matter of penalties, and that the petition was not in accordance with the Act, as it did not state the distance of the signatories' residences from the house. Mr. Butt having remarked that that was not required, Mr. Kenny argued that the local-option vote was improperly taken, inasmuch as it was not taken at Windsor, and the vote

taken at Ngapara was corrupt. The Inspector pointed out that the vote could not be upset. We have stated the arguments *pro* and *con*, in order that the position may be comprehended. We are aware that only twenty persons voted when the local-option poll was taken—twelve against and eight for—but the vote decided that no new publicans' licenses should be granted, and a Committee is required by the Act to respect such a vote. It matters not whether the poll be large or small, or whether the majority be one or many, the vote cannot be impugned. The Act clearly lays down that "If the majority of the votes that have been given are in favour that the number of licenses . . . is not to be increased, then that shall be the determination;" but that if the vote should be in favour of any increase, the Committee are not bound by such a decision to grant any increase. It is evident that Mr. Butt realised that this was the intention of the Act when Inspector Thompson read to the Committee those portions of the Act referring to the question, and that he was driven to the necessity of making the very questionable suggestion that the Committee could infringe the Act with impunity, as no penalty was provided in case of any infringement. According to Mr. Butt, it is only incumbent upon one to do right through fear of punishment. That gentleman sunk his morality in his professional assiduity. He ought to have learned by this time that lawyers must not be dishonourable even in the interests of a client, and that it is not one of the functions of the learned in law to encourage infractions of the law. We have noted everything that has been urged in favour of the applicant (Mr. Kenny) and of granting him a license; but, even if Mr. Kenny were an angel, and the people of the locality that he seeks to benefit were dying of thirst, the establishment of the means of mitigating such suffering could not be compassed in the face of the present law. It is true that Mr. Kenny nominated the Committee, and that it was elected without opposition; but these circumstances do not entitle Mr. Kenny to an exceptional and improper advantage, nor do they justify the Committee in ignoring the law that they were appointed to administer. So long as the principle of local option is retained in the Act, it must be as much respected as any other portion of the Act. If the local-option vote is to be subject to the veto of a Committee the sooner the provisions conferring the power to exercise that vote are eliminated from the Act the better. We are, however, convinced that, though the people are careless in the exercise of the local-option privilege, they would not relinquish it without a severe struggle. It is a wise and beneficent privilege that should be valued by all parties—by the licensed victuallers because it is calculated to restrict competition, and by the public because it gives them the power to prevent the establishment in their midst of what might prove a nuisance and an agency for the creation of immorality. There can be no question, as our correspondent "Observer" pointed out last night, that the Committee has done an illegal act, and that legal proceedings might be instituted that would prevent Mr. Kenny from enjoying the privilege that has been illegally granted to him.

Inspector THOMPSON, Oamaru, to the COMMISSIONER of CONSTABULARY, Wellington.

SIR,—

Constabulary Office, Oamaru, 13th July, 1886.

I have the honour to report, with reference to the attached correspondence on the grant of an accommodation license to Jeremiah Kenny, that I laid an information against Kenny for selling liquor without being duly licensed; that it was heard yesterday before the Resident Magistrate, by whom it was dismissed, on the grounds that he had no jurisdiction to inquire into the acts of the Committee. I beg to attach a cutting from the *Oamaru Mail* of yesterday, giving a full report of the proceedings.

I have, &c.,

ANDREW THOMPSON, Inspector.

The Commissioner of Constabulary, Wellington.

THE KENNY LICENSING CASE.

THE question of the validity of the license recently issued to Jeremiah Kenny for Kenton Hotel, under the certificate of the Waiareka Licensing Committee, came before the Resident Magistrate's Court to-day, when Mr. Kenny was charged with selling liquor without being duly licensed. His Worship H. W. Robinson, Esq., R.M., was on the bench.

Inspector Thompson prosecuted, and Mr. Butt appeared for the defence.

Inspector Thompson, in opening the case, said that the information had been laid in order to test the validity of an accommodation license granted to the defendant by the Waiareka Licensing Committee at its last annual meeting in June. Section 45 of "The Licensing Act, 1881," stated that no new accommodation license shall be granted until the ratepayers shall previously have determined whether the number of such licenses may or may not be increased. Sections 46 to 48 described the manner in which that determination shall be ascertained; and section 47 provided, *inter alia*, that, "If the majority of the votes that are given are that the number of licenses is not to be increased, then that shall be the determination." In 1885 the votes of the ratepayers in the Waiareka Licensing District were taken under that portion of the Act, and the determination was that there should be no increase in the number of licenses. At the annual meeting of the Committee in June, 1885, Mr. Kenny applied for an accommodation license, but, as the granting of it would have increased the number of licenses, the Committee declined to entertain the application. At the last election of a Licensing Committee for the Waiareka district Mr. Kenny came forward and proposed the members of the present Committee.

Mr. Butt objected to a matter which had no relevancy to the case being introduced.

Inspector Thompson said he would not persist in the matter. He went on to say that at the last annual meeting of the Waiareka Committee Mr. Kenny renewed his application for a license, and the Committee granted it, with a full knowledge that in so doing they increased the number

of licenses in defiance of the determination of the ratepayers that there should be no increase. The statute distinctly declared that no person shall sell liquor without being duly licensed to do so, and in Webster's dictionary, which, he submitted, might be accepted as a good authority, the meaning of the word "duly" was given as "in a due, fit, or becoming manner, properly, or regularly." He submitted that the license had not been issued "in a due, fit, or becoming manner, properly, or regularly," and that therefore the license was not valid. A Committee had by law certain discretionary power, which gave it a very comprehensive jurisdiction, and so long as it acted within that jurisdiction the law would not question its acts, be they prudent or imprudent; but when it did an act which was outside its jurisdiction it committed a breach of the law, and the law would not support it in so doing. As his Worship was aware, if a Magistrate issued a warrant in a matter in which he had jurisdiction and intrusted it to a bailiff or constable for execution, and that officer were sued for trespass for executing it, that warrant would be a good defence; but should the Magistrate issue a warrant on a matter in which he had no jurisdiction, the constable executing it could not plead justification, because the warrant was of no legal value. And he submitted that the Committee, having gone outside its jurisdiction and issued a certificate, the license was of no legal value, but was null and void. He quoted from "Addison on Torts" (p. 644) in support of his contention.

Evidence was then called.

Constable Streat, of Ngapara, stated that on the 1st instant he visited the accommodation-house of the defendant, and purchased two glasses of beer. The place was fitted up as an hotel.

Mounted Constable Pascoe produced a *Gazette* giving the boundaries of the Waiareka Licensing District, and gave evidence that defendant's house was within that district.

Inspector Thompson said that this closed the case.

Mr. Butt submitted that the defendant had no case to answer.

Inspector Thompson held that it had been proved that the defendant had sold, and it devolved upon him to show that he was properly licensed. When this was done he (Inspector Thompson) would call rebutting evidence to show that the license was improperly issued.

Mr. Butt said the onus of proof rested with the prosecution.

His Worship pointed out that by a clause of the Act the onus of proof was shifted to the defendant, in so far that he had to show that he was licensed to sell.

Mr. Butt here put in the license.

Inspector Thompson then asked to be allowed to call evidence to show that the license was not a proper license.

Mr. Butt held that under clause 172 he had done all that was necessary, and directed attention to the wording of the clause, which simply referred to "a license," and did not contain any reference to the licensee being "duly" licensed. The prosecution had closed its case, and had failed to show that the license had not been properly issued.

Inspector Thompson claimed that he had a right to call rebutting evidence.

Mr. Butt submitted that the prosecution had no right to call rebutting evidence. Evidence of the invalidity of the license should have followed the opening of the case.

Inspector Thompson held that until the license was produced it was impossible for him to adduce evidence of its validity or otherwise.

His Worship said he did not think he would be justified in refusing to hear rebutting evidence, particularly as there was nothing in the Act that the mere production of the license should be conclusive.

Mr. Butt then addressed the Bench upon the whole matter. By interpretation clause 4 the word "innkeeper" was made to include the holder of an accommodation license, and all advantages, pains, and penalties granted to or imposed upon a publican applied to the holder of an accommodation license. Clause 32 defined the nature of an accommodation-house, and clause 108 named the fee payable. He next referred to the constitution of Committee, and submitted that the Committee were a body wholly independent of any other body—a statutable Licensing Court; and he defied the prosecution to point to a single clause or word in the Act giving his Worship the power to review the acts of the Licensing Committee—that his Worship had no power to consider whether or not the license was properly issued, and that his Worship was bound to accept the license as properly issued. He pointed out that Mr. Justice Richmond had lately held that a Licensing Committee was a tribunal beyond the control of even the Supreme Court. The Committee had a jurisdiction equal to that of this Court, and this was not the Court in which the validity or otherwise of the license should be determined. Assuming that his Worship had the jurisdiction, where would the question end? If the Court was going into the question of whether or not the license was granted it would have to go back and ascertain whether or not the Committee had issued the license, and whether or not the Committee had been properly elected. No one had ever yet dared to challenge the validity of a license issued by a Municipal Council, and, arguing by analogy, he held that the validity of a license issued by a Licensing Committee could not be challenged. He held that section 172 was the essence of the whole case, and that under that clause there was no reference to the license being "duly" issued, and that, so long as the defendant had a license, no matter how issued, so long as issued by a proper authority, he could not be charged with illegal sales, the Court having no power to review the action of the Committee. He held that the case could go no further in that Court.

Inspector Thompson said that the power of granting licenses was vested not in the Licensing Committee but in the ratepayers.

Mr. Butt objected to this question being opened up, as they had no evidence of the ratepayers ever having done anything in regard to the license.

Inspector Thompson urged that, notwithstanding that there was nothing in the Municipal Corporations Act or the Counties Act giving the Court any power of review, the Court had a right to say whether or not a by-law was good, and, by analogy, the Court had a right of review in regard to the Licensing Act.

Mr. Butt argued that the Licensing Committees were bodies with vastly greater powers than Borough Councils. The Committee had been elected by the people, and the Court must assume that they had, in issuing the license, registered the will of the people. The validity of a particular vote of a member of Parliament could not be challenged because it was in direct antagonism to a promise made by him to his constituents.

His Worship said he was inclined to think that the production of the license must be final so far as the defence was concerned in that Court. He did not think the Court had power to review the actions of a body of equal jurisdiction properly constituted, and with special powers conferred upon it by statute. So far as that Court was concerned, it must assume that all which had been done had been purposely done. If it were desired to go behind the license and ascertain whether or not the license were properly issued he thought the proper Court to inquire into the matter was the Supreme Court. It could not be done by a Court of inferior jurisdiction, or, at best, of only equal jurisdiction. He was not clear that the Committee were not liable to proceedings *quo warranto*, or if they had not been guilty of a misdemeanour; but these were questions which that Court could not determine. As the learned counsel for the defence had pointed out, if that Court were in a position to go behind the license, there would be no limit to the power of the Court, and it would possess full authority to view all the proceedings of the Committees. Such a power he did not think the Court possessed, and the case would therefore be dismissed.

His Worship declined to allow costs.

BISHOP of AUCKLAND to the Hon. the MINISTER of JUSTICE.

SIR,—

Bishopscourt, Auckland, 8th November, 1889.

At a large meeting of Auckland citizens held on the 5th November, I was requested to send you the enclosed extract from the *New Zealand Herald*, containing a statement made by the Rev. G. B. Monro at a meeting of the New Zealand Presbytery. In consequence of the publication of the said statement in the local newspapers, a meeting was convened, by circular, for the consideration of this subject, and was attended by a large number of clergy and laity of various denominations, the chair being occupied by myself. At this meeting a committee was appointed, of which Sir W. Fox was convener, to consider the subject and to report to a future meeting, to be called by circular. At the second meeting it was resolved that a letter be sent to the Minister of Justice, calling his attention to the necessity of steps being taken to suppress "disorderly houses" by legal proceedings. There appears to be no power to proceed summarily on the prosecution of the police before the Resident or other Magistrates, although provision has been made to that effect by colonial statutes in a great number of other specified cases of offence against good order, decency, health, and morality. It is believed that the offence of keeping a "disorderly house," although it amounts at common law to a public nuisance, can only be punished by indictment in the Supreme Court. It is self-evident that this is not the function of any private person. The intervention of the Crown Prosecutor would be required; but the police, who, it appears, are in full possession of the facts with which they almost necessarily become acquainted in the routine of their ordinary duties, could be required by Government to "get up" the cases, and pass them on to the Crown Prosecutor as they do in the case of various other offences. It appears from the Rev. Mr. Monro's statement that in Auckland the police are well aware of the existence of a large number of "disorderly houses;" and it is believed that in some of the other cities of the colony regular reports on the subject have been periodically made by the police to the heads of their departments. The police have, it appears, cognisance of the names of many of the habitual residents in some of such houses, and of the casual frequenters of both sexes in others, as well as of the owners or tenants of most of them. There would be no difficulty in obtaining sufficient evidence to convict the keepers of such houses. It is a fact that for some centuries in England prosecutions by indictment under the common law have been carried on successfully down to the present time. In that country, however, one or more Acts have been passed for the purpose of facilitating proceedings, but they do not supersede the common law remedy, and, though probably they are not in force in this colony, the common law is. If, however, any technical or practical difficulties should be found to exist they could, it is thought, be easily removed by legislation; but we are not aware that any such difficulties do exist. I am requested to add that it is the unanimous opinion of the persons present at the meetings held in Auckland during October and November to consider these matters that the "age of consent" should be raised to sixteen years.

I have, &c.,

The Hon. the Minister of Justice.

W. G. AUCKLAND, Bishop.

VICE IN AUCKLAND.—THE REV. MR. MONRO'S INVESTIGATIONS.—DISCUSSION BY THE AUCKLAND PRESBYTERY. (1ST OCTOBER, 1889.)

At the ordinary meeting of the Auckland Presbytery yesterday morning, the Moderator (Rev. B. Hutson) asked the Rev. G. B. Monro if he had any report to submit as to what had been done by the Religion and Morals Committee.

Mr. Monro said that he had not.

The Rev. J. Macky thought there was a very general desire in the Presbytery that Mr. Monro should give a report in connection with the work of the committee, of which he was the convener. He thought that Mr. Monro would consider the Presbytery as fit as the public prints to receive any information.

The Moderator asked Mr. Monro if he could give them no information at all. Could he give them, if not an interim report, some information as to what was being done by the committee?

The Rev. Mr. Monro said he could not give any report in the name of the committee without their consent. It would be a different matter if the Presbytery passed by the members of the committee and asked him for a report.

The Rev. A. McCallum said the information had been given to the public by Mr. Monro in a very concise and very wise form, and anything further would have to be dealt with very carefully. He did not think the open Court was the place to deal with it. A meeting of the ministers of other denominations might be called to join with the ministers of the Presbyterian Church in considering the serious state of things; but they should be careful in dealing with a matter of this kind, considering the almost prurient desire of the public for anything that might gratify their curiosity in that way.

The Rev. R. Sommerville said the matter had been before the public, and this fact removed the objection raised by Mr. McCallum. He thought that Mr. Monro ought to take the Presbytery into his confidence, in order that they might assist him. They did not want him to go into any details that would shock people's nerves, but he thought they should have a report from Mr. Monro, as he was the convener of the Committee on Religion and Morals, and therefore the representative of the Presbytery.

The Rev. R. F. McNicol agreed that Mr. Monro was acting quite in order in objecting to give any report until he had called the committee together; but, he pointed out, the Presbytery might be prepared to give Mr. Monro suggestions as to the *modus operandi* in dealing with this terrible evil.

The Rev. R. Sommerville urged that the eyes of the public were upon them in regard to this question, and if they did nothing it would be said, and justly so, that it was "all cry and no wool." It was for the Church to see to its interests in the practical work of Christian morality. They did not want to know what was not desirable to know; but he thought it desirable that the committee should be requested to convene a meeting to take into consideration this large question. Mr. Monro had taken the lead, and their Church ought to take the lead all through.

The Moderator said he would not like to see a question like this discussed in open Court, and he suggested that Mr. Monro should, without giving any detail, report that certain matters had come under his notice privately, and ask the Presbytery to take action upon the matter.

The Rev. G. B. Monro said he hardly understood the suggestion; the members tied him down. However, he would briefly speak on the subject. As he had stated, the committee had not met formally, and he had no report to give in the name of the committee. The action which he had taken, and which had been reported in the public papers, and regarding which he had received letters from many people, and from all parts of the country, thanking him for it—that action was taken in his own name, and he took all responsibility upon himself. He had stated at a conference in St. James's Church that he intended to go round the city with a detective. He had heard and read a great deal about the immorality of Auckland, and he resolved to go round and look for himself. After the meeting he wrote to Inspector Broham, telling him of his intention. In reply, the Inspector wrote him a courteous letter, offering to place at his disposal the services of any officer of the Police Force. He (Mr. Monro) corresponded with Detective Hughes, one of the most experienced and intelligent of the detective staff, who replied, kindly telling him that he was ready to accompany him at any time he pleased. Accordingly he (the speaker) called at the police office one night, and met Detective Hughes. Before they started on the round of the city that officer showed him a number of books which opened his eyes. He showed him a list of the thieves and criminals in Auckland, and there were in these books the names of three hundred professional criminals—male criminals entirely outside the class he was going to speak about, and of all religions and of all nationalities. They started on their rounds—it was night—and they commenced at what might be called the lowest dens of the city, and went higher and higher in their investigation. He need not enter into any details.—(Hear, hear.)—They could fill all that up with their imagination. He and Detective Hughes visited twenty-four houses, as he had stated in his letter to the paper, not merely in the slums of the city, but in the respectable streets too. They conversed with the inmates, and he (Mr. Monro) took notes, and learned a great many things, as they could imagine. He learned that a great many of the girls were intelligent, had once occupied prominent positions, and were daughters of leading settlers and even citizens. As to the class of men whom he saw, he could only say that, as a minister of the Gospel, it had pained his heart very much. He hoped that the reporters would take down this statement, as he had been misunderstood in his reply, and it had been stated that he had blamed one sex only. He must emphatically say that he had not the slightest sympathy with the other sex, and if he had the power he would publish the whole thing.—(Hear, hear.)—But he had not the power, and he could not do it. He wished to mention another subject in this matter. He would direct their attention to what were termed houses of assignation. These houses were far more dangerous to the morals of the community than the brothels were, because in the brothels men ran the risk of detection and disease, but in the houses of assignation they could carry on their crimes in secret. There were respectable men and respectable women going to these places, and he had been perfectly shocked to find that they existed in Auckland. He had received letters saying that he had understated the matter. He had put himself to the trouble of inquiring from the detective staff, and they had said that he had understated it. He would like this to be understood: He did not write his letter in favour of the C.D. Act; but he had modified his views in regard to the C.D. Act—he might be right and he might be wrong—and in doing all that he had done he wanted to throw light upon the great evil that was ruining the youth of our city. During the time that the C.D. Act was in force there were seventy-five professional prostitutes in Auckland, and what is called amateur prostitution had been driven, if not out of the city altogether, at any rate into very great secrecy. He had found that the girls were only too ready to tell on one another, and the detective whose duty it had been to carry out the work under the Act had thus received great assistance—at any rate, this prostitution had been driven off the streets into secrecy, and juvenile prostitution had been very much lessened. At present, however, there were four hundred professional women of this kind known to the police, who also said—and he had no reason to doubt the truthfulness of these men—that about the same number were carrying on this vice in secrecy. Now, if there were eight hundred girls living in this way, think of the number of

men there must be to keep all this up, and of the amount of money that must be spent in this vice. They talked of the money spent in gambling and in drink, but more money was spent in this vice than in any other, because the magnificent houses which they saw could not be maintained otherwise. They talked of commercial depression. He would take every opportunity he could to refute any statement of this kind, because there could be no commercial depression with the amount of money spent in gambling, drink, and this terrible vice. At the close of his visit to the twenty-four houses he asked his friend, What is the beginning of the lives which these girls lead? He replied that they began perhaps in the suburbs by going out late at night—going out to parties and out to dances every night, staying late at night, and going home with men whom they had never seen before, and liberties were taken and allowed, and the girls gradually sank to their life of degradation. He (Mr. Monro) believed that this was one of the reasons. He would like to mention that there were in Auckland what were called brothel-agents, who laid themselves out to entice girls to ruin, and to get hold of men to go to these houses. There were married men who sent their wives out on the streets, and lived by their prostitution; there were mothers who sent their daughters out on the streets, and lived by their prostitution. He and the detective had visited the houses of some of these people. And there was no remedy for this state of things. They had no Magdalen Institution or other institution of this kind in Auckland to reach this class. They had the Salvation Army doing work.—(A voice: “Mrs. Cowie’s Home.”)—Mrs. Cowie’s Home did not reach this class at all; it was for servant girls who happened to be unfortunate, and who went in there for a time, and then went away again. The Church could not get into these places of which he had spoken; there were chains on the doors, and they could not get in unless they went as he had gone. A minister could never get in unless he went in secret. He had learned from a warehouse chemist that the disease which went along with this vice, with which God had branded this vice—that that disease had increased to an enormous extent, because the sale of medicines had increased. If all these facts were correct, what was their duty in regard to them? Were they to shut their eyes and fold their arms and do nothing? His purpose in visiting these places had not been curiosity; he had gone to see the evils, and to endeavour to discover the remedy. He believed one of the causes was what he had stated—this staying out late at night, and these dances; and he believed that the Christian Church ought to take a very definite stand in regard to this, and denounce it in unmeasured terms. There were other reasons—for instance, the climate, or if a number of men-of-war vessels came into this port a certain class of girls crowded into Auckland. Another cause might be found in the great amount of flesh that was eaten here, heating the blood and causing sensuality. There were, then, two kinds of remedies—legislative and moral. As to the legislative remedies, many of them had no sympathy with the C.D. Act.—(Mr. Carrick: “Certainly not.”)—Well, he (Mr. Monro) had had no sympathy with it for a long time. He had, however, gone every month to the Lock Hospital, to speak to the inmates—he believed he was the only minister in the city who had done so, outside of Mr. Brakenrig. When he first went there were twelve or fourteen girls there; when he last went there were four or six. The inference from this was, that the disease was being lessened. Half a loaf was better than nothing, and if the disease was being lessened by the existence of that Act he would support the measure. Of course they knew the argument—his own argument—that it made vice easier for men. Well, if these facts were right the C.D. Act lessened prostitution and disease; and at present the girls of that class were swarming the city, and even soliciting by day. It might be said that the police could stop this, but the police could not do it; the police were powerless unless they awakened public opinion, and the police could not go into these houses unless they were disorderly. As they knew, the age of consent had been raised, but he thought they might insist upon some more stringent measures in this direction. Then, there was the literature which existed. Again, if they went into the streets of this city they might see in tobacconists’ shop-windows pictures that awakened at once evil desires. Mr. Monro mentioned a letter which had been received from the Ministers’ Association of Invercargill, containing a warning against a book recently issued there, and put forth as a classical work. He went on to point out that it was through evil literature and pictures such as those he had mentioned that a great deal of what he had spoken of was fostered. He would like very much to see established in Auckland a reformatory for those beginning that life—girls of thirteen or fourteen years. For those who had been living in that way for a long time, there was, humanly speaking, very little hope. They had no Magdalen Institution here, as in Glasgow and other large cities. He would put a hypothetical case. Supposing a girl went to the police office, and wanted to see a medical man; she was suffering from this disease; where is she to go? She is sent to the Hospital, to take a bed in the open ward, and she may be put next to a pure and most respectable woman. Was this a right state of matters?—(No.)—He maintained that it was not. Thoughts might be put into the mind of that pure and innocent woman which she might never otherwise have known, and it was absolutely necessary in cases of this kind that there should be isolation. The Church folded her arms, and matters went on, and the evil was increasing. Mr. Monro apologized to the Presbytery for his remarks, saying that he had gone further into details than he ought to have done.

The Moderator agreed with Mr. Monro, that measures should be taken for the punishment of the men, who were really the cause of it all. He would save the women and punish the men, if he could.

The Rev. R. Sommerville said that, as he was the means of bringing Mr. Monro out, it fell to him to say that it was a wise thing that Mr. Monro had been drawn out. The statement he had made was of great value, and he had not said a word out of place.—(Hear, hear.)—That very morning, when he (Mr. Sommerville) was coming to town, he saw displayed on the walls great placards, which he found mentioned a certain medicine. These placards were exceedingly suggestive of the state of immorality in Auckland. They would agree that Mr. Monro had taken a very wise course in making himself familiar with this subject. It was a bold thing for him to do, and he deserved not only their thanks, but the thanks of the whole community, for the manner in

which he had dealt with this matter. They could not, however, discuss it fully; they were only a part of the community, and he therefore moved, "That Mr. Monro be thanked for his conduct in ascertaining the terrible state of immorality now disclosed by his statement; and that the convener of the Religion and Morals Committee be requested to convene a meeting of ministers of other denominations and others interested in this question to consider what steps it may be desirable to take to remedy this evil."

The Rev. A. McCallum seconded the motion. He thought they should keep in view the statement made by Mr. Monro regarding dance entertainments, late hours, and the excitement of the passions through the drinking of champagne and other heated liquors. It was thirty years since his elders had complained of young men being turned out in the streets in the small hours of the morning, having no places to go to except places of evil. Another thing was the influence upon young women employed in hotels selling liquors as barmaids. He had received evidence from Melbourne showing that a terribly large percentage of women employed in this manner fell into the ways of ruin and shame. As to solicitation in the streets, which had been spoken of, why should colonial cities be exceptional from other parts of the civilised world? Such a thing was prohibited in Paris, San Francisco, Naples, and over the Continent generally; and why should it be allowed by the police here? He thought they should urge upon the attention of the authorities the necessity for passing stringent regulations to prohibit known prostitutes from appearing upon the streets and soliciting. As to the necessity for the C.D. Act, they had their own opinions.

The motion was unanimously agreed to.

The COMMISSIONER of POLICE to the BISHOP of AUCKLAND.

Police Department, Commissioner's Office,
Wellington, 26th November, 1889.

MY LORD BISHOP,—

I am instructed by the Hon. the Defence Minister to acknowledge the receipt of your letter of the 8th instant, enclosing an extract from the *New Zealand Herald* containing a statement made by the Rev. G. B. Monro at a meeting of the Auckland Presbytery, and, in reply, to inform your Lordship the subject referred to will be carefully considered before next session.

I have, &c.,

JAMES G. FOX,
(For Commissioner.)

The Right Rev. the Bishop of Auckland.

Approximate Cost of Paper.—Preparation (not given); printing (1,300 copies), 27 2s.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1891.

Price, 6d.]

