

Committees of Palmerston North (R. 180), Wairarapa (R. 183), Buller, Motueka, Westland (R. 233), Central Otago (R. 266). The Licensing Committees of Wallace (R. 269) and Awarua (R. 274) expressed the view that there should be a reasonable ceiling on goodwills.

CHAPTER 23.—MANAGED HOUSES

491. We are informed by Hancock and Co. that the system of appointing managers for hotels was begun in New Zealand when Hancock and Co., having rebuilt, in 1901, the Grand Hotel, Auckland, which had been destroyed by fire, found it impossible to obtain a tenant at any rental (R. 3779). We are also informed by the Campbell and Ehrenfried Co. that that company appointed its first manager in 1917, after 6 o'clock closing had been introduced by the Sale of Liquor Restriction Act of that year. At that time, lessees of licensed premises thought they would suffer a diminution of income, and section 4 of the Act gave the lessee the right to require the lessor to accept a reduced rent or, at the option of the lessor, a surrender of the lease. The Campbell and Ehrenfried Co. found that lessees offered very low rentals, and the company began the appointment of managers.

492. Counsel for the New Zealand Alliance submitted that the conduct of an hotel by a company through a manager who holds the publican's license is contrary to the Licensing Act or, at least, to the spirit of the Licensing Act. He submitted that the Act contemplates that the licensee shall be responsible for the sale of his own liquor in his own premises, and that a manager, though he holds a publican's license, is a mere servant of the hotel company, liable to be dismissed at the will of the company and to have his license transferred at any time by the company pursuant to a blank transfer signed by the manager before taking up his duties.

493. *Prima facie*, there is ground for this submission. Both the publican's license and the accommodation license are issued to a particular person in respect of particular premises (see forms in the Seventh Schedule to the Licensing Act, 1908). The sale by any person of liquor without being duly licensed to sell the same or at any place where he is not authorized by his license to sell the same is prohibited by section 195 of the Act. As the manager has no proprietary interest in the premises, it may be asked how the publican's license can be issued to the manager in respect of those premises.

494. Furthermore, under the ordinary law the company, by virtue of its ownership of the premises, has the right to conduct business in those premises by its agent. The manager is its agent. Under the ordinary law, every sale is a sale by the agent on behalf of his principal, the hotel company, and therefore a sale by the hotel company. Why, then, it may be asked, is not every sale, for the purposes of section 195 of the Licensing Act as well as for the purposes of the ordinary law, a sale by the company, not by the manager; and why, as the company does not hold the publican's license to sell, is not every sale an unlawful sale by the company?

495. The answer given to these questions by an English Court is that the prohibition under a section similar to section 195 exists only for the purposes of the Licensing Act and does not extend to all the transactions involved in a sale. For example, the barman is not licensed to sell, yet he takes the order, delivers the liquor, and takes the money. It follows that the ascertaining of the person who must hold the license, for the purposes of the Licensing Act, depends upon the object of section 195 of the Act. That object, as stated by Lord Reading, C. J., in *Mellor v. Lydiate* (1914) 3 K.B. 1154, is "to make the person who conducts and manages the business there transacted responsible to the Licensing Justices for its proper and orderly conduct and management in accordance with the requirements of the statute and of the Licensing Justices in pursuance thereof" (see Luxford, 149).

496. If, however, the licensee is a mere dummy, the position is different and the principal requires a license: *Dunning v. Owen*, (1907) 2 K.B. 237. A manager is not, however, a mere dummy when he is required to conduct a hotel according to the