

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.