

5.—*Licensing and Publichouse Reform in Ireland.*

BY WILLIAM LAWSON, ESQ., LL.D., Barrister-at-Law.

(A Continuation.)

[Read Friday, March 27th, 1903.]

A little more than a year ago I read a paper on this subject before this Society (Journal, Vol. XI., p. 106), dealing mainly with the Report of the Royal Commission of 1896. I intend now to deal with the schemes proposed for the reduction of the number of public-houses, and for compensation, and the question of popular control and local management, and to refer to some of the experiments which have been made in England to improve the condition of public-houses. Time did not permit me to deal with these matters in my former paper. Before referring to them, however, I propose to refer to the legislation which has taken place on this subject in England and Ireland in the last session of Parliament.

The Government Bill, the extension of portions of which to Ireland I then advocated, has become law in England (The Licensing Act, 1902), (2 Ed., 7, c. 28.) Not only so, but the pressure of public opinion in Ireland as to the great evil caused by the excessive number of public-houses, has led to the passing of a short, simple and stringent Act for Ireland only, the Licensing (Ireland) Act, 1902 (2 Ed., 7, c. 18), which prohibits (with certain exceptions) the issue of new licenses. Section 2 provides that after the passing of the Act (July 31st, 1902), no license shall be granted for the sale of intoxicating liquors whether for consumption on or off the premises, except (1) : For premises, now licensed, or which were licensed at any time since January 1st, 1902 ; or (2) for a hotel (which is defined as a house containing at least 10 apartments, set apart, and used exclusively for the sleeping accommodation of travellers, and having no public bar for the sale of intoxicating liquors), or (3) for a railway refreshment room. Section 3 contains a provision as to expiring leases, viz. : that where, by reason of the expiration of a lease, a license for the sale of intoxicating liquors for consumption on the premises comprised in the lease is extinguished or surrendered, the licensing authority (*i.e.* the justices), may, notwithstanding anything in the Act, grant a license for suitable premises in the immediate

vicinity of the premises to which the lease so extinguished or surrendered was attached.

Section 4 deals with the case of the growth or extension of any city or town owing to an increase in the population (which is to be taken to mean an increase of not less than 25 per cent. of the population at the last census), and empowers the licensing authority, if satisfied that the restrictions on the granting of licenses imposed by the Act may be relaxed, to grant a license to any applicant, but the license is only to be granted for premises in the parish in which such increase of population has taken place and in substitution for an existing license or licenses held in respect of premises in the city or town comprising the whole or any part of the parish. Section 5 puts a minimum limit on the valuation of premises for which applications for licenses may be made under section 2 (2) and sections 3 and 4, viz., £30 in the Dublin Metropolitan Police District and the city of Belfast; £20 in the cities of Cork, Limerick, Waterford and Londonderry; £15 in the city of Kilkenny and town of Galway; £12 in any other town of over 10,000 inhabitants according to the last census, and £10 in all other places. This section does not go as far as the recommendations of the Royal Commission that there should be a rating qualification of £25 for all houses in towns over 10,000 inhabitants; £15 in towns over 5,000 inhabitants, and £12 elsewhere, and that this should apply to all new licenses, and be applied to all existing public-houses at the end of five years. Section 6 contains an exception in favour of premises adjoining or attached to licensed premises, enabling a new license to be granted for such premises in order to render the premises already licensed more suitable for the business carried on therein. Section 7 provides that the Act is not to be taken to affect the law as to transfer or assignment, or renewal of licenses. That is to say, the Act leaves the law as it was, and does not adopt the recommendation of the Commission to assimilate the law to that which prevails in England, where the licensing authority has full power to grant or refuse a renewal or a transfer as well as a new license. Finally, by section 9 the Act is temporary, lasting only till December 31st, 1907, and no longer, unless Parliament shall otherwise determine.

Turning to the English Act of 1902, let us see what alterations it has made, and how far such alterations should be applied to Ireland. In my former paper I gave some particulars of the Bill, as the measure then was, which passed into law with little alteration. The Act is divided into three parts :—Part I. deals with the amendment

of the law as to drunkenness ; Part II. with the amendment of the licensing law ; and Part III. with the registration of Clubs. Section 1 provides that if a person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, and appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law. This is in accordance with the recommendation of the Commission, that there should be in England a general power of arrest for simple drunkenness, apart from disorder. There is a power of summary arrest for simple drunkenness in Ireland under 6 and 7 Will. IV., c. 38, s. 12, but some doubt was thrown on this power, and the Commission recommended that the power should be more clearly defined. Section 2 provides that a person found drunk in a public place (as above defined), while in charge of a child under the age of 7 years may be apprehended, and shall be liable to a fine not exceeding 40s., or to imprisonment for a period not exceeding one month, with or without hard labour.

Section 3 gives power to require a person convicted of drunkenness to give security for good behaviour. The term drunkenness here means one of the different forms of offence described in the First Schedule to the Inebriates Act, 1898. Section 4 provides that when it is proved that any person was drunk on licensed premises, the licensed person must prove that he took all reasonable steps to prevent drunkenness on his premises.

Section 5 provides protection for the wife or husband of an habitual drunkard by enacting that orders may be made by a Court of Summary Jurisdiction, that the applicant be no longer bound to cohabit with the other, for the custody of the children, for payment of an allowance to the wife or for her use. It also enacts that the Court may with the consent of the wife order her to be committed to, and detained in a retreat licensed under the Inebriates Acts 1879 to 1900, the licensee of which is willing to receive her : this is an alternative to the power which directs that the husband is no longer bound to cohabit with the wife. These are salutary provisions, and ought, as I advocated in my former paper, to be extended to Ireland. In order to give a wife in Ireland the benefit of section 5 as it stands, it would be necessary to make the Summary Jurisdiction (Married Women) Act, 1895, apply to Ireland, in the case of a habitual drunkard, as it is made by the Act to apply to that case in England. This Act of 1895 gives power to the Court to make orders in favour of the wife, (such as are mentioned in section 5 of the Act of 1902), in the case of the husband having been convicted of aggravated

assault on the wife, or having deserted her, or been guilty of persistent cruelty to her, or of continual neglect to provide for her or her infant children, and having by such cruelty or neglect caused her to leave him and live apart from him. In Ireland power is only given to the Court to interfere in the case of desertion, in which case it can make an order protecting the wife's money and property (28 Vict. c. 43, Act of 1865), or by virtue of a later Act (49 and 50 Vict. c. 52, Act of 1886), it can make an order on the husband who has deserted his wife, to pay her a weekly sum. There seems no reason why the law should afford less protection to a married woman in Ireland than in England.

Section 6 of the Act of 1902 prohibits the sale of liquor to persons declared to be habitual drunkards (*i.e.*, persons against whom an order of detention in an inebriate reformatory could be made under the Inebriates Act, 1898) by providing that notice of the conviction of the offender is to be given to the police, who are to give information of the making of the order to licensed persons and secretaries of clubs registered under Part III. of the Act, and imposing a penalty on the convicted person if he obtains liquor at any licensed premises within three years after the date of the conviction, and on the licensed person for knowingly supplying him with liquor. This is a very stringent enactment, and it remains to be seen how it will work in England. Section 7 imposes a penalty for procuring drink for a drunken person on licensed premises. This provision might well be applied to Ireland.

Since writing the above, I find that a Bill has been introduced by Mr. Russell to amend the law relating to drunkenness, and to provide for the registration of clubs in Ireland. It appears from a proof of the Bill with which I have been furnished, that it proposes to adopt the principal provisions of Part I. of the English Act, and the whole of Part III. Clause 1 (protection for sober married persons), enables a Court of Summary Jurisdiction, on the application of a wife when her husband is in the opinion of the Court habitually intemperate and drunk, to grant to her an order protecting (1) her earnings or separate property; (2) anything she has purchased or directed to be purchased with the same; (3) the wearing apparel and school requirements of the children or step-children, and their earnings, if any; (4) tools, instruments and appliances, materials or anything entrusted to her, and not to her husband; (5) furniture, bedding and other articles in use as household necessaries in the home; (6) tools, or other articles in connection with any work by which a wife or her children endeavour to earn money,

apart from the work or calling of her husband. It makes any interference with such property by any person wilfully, or while under the influence of drink, punishable as in case of a common assault, with power to bind the party to good behaviour. In the case of a drunken wife it gives the court power, on application of the husband, to make a protection order as to (3), (4), (5), (6), above mentioned, and imposes a penalty on a pawnbroker receiving articles so protected after written notice of a protection order without the written authority from the applicant for such order. Clause 6 adopts, almost verbatim, clause 6 of the English Act (prohibition of sale of liquor to persons declared to be habitual drunkards.) Clause 7 adopts clause 7 verbatim (penalty for procuring drink for drunken persons). Clauses 9 and 10 adopt verbatim sections 2 and 3 (penalty for being drunk while in charge of a child, and power to require persons convicted of drunkenness to give security for good behaviour.) There are other provisions not in the English Act, which I need not refer to, save one, clause 11 (drunkards in tenement houses.) It makes punishable the use while drunk of profane and obscene language, or the making of noise without lawful excuse to the annoyance of inmates of other tenements in the same house.

Mr. Hugh Law has introduced a bill adopting some of the provisions of Part II. of the Act, viz., section 9 (recording of conviction of licensed person), section 12 (removal of disqualification of justices interested in railways) section 17 (occasional licenses). It also contains a new clause dealing with bona fide travellers, extending the distance limit in s. 28 of the Licensing (Ireland) Act, 1874, to ten miles, and providing that such person is not to be deemed a bona fide traveller unless he can prove that he is bona-fide travelling for health or business. (See the recommendation of the Royal Commission mentioned in my former paper.)

The only other Irish Bill dealing with the subject, so far as I am aware, is Mr. Sloan's Bill for early closing on Saturdays, which has been read a second time in the House of Commons. It adopts the recommendation of the Commission that the hour of closing on Saturday should be 9 p.m., and it appears that a like bill was recommended by a Select Committee of the House of Commons in the Session of 1888, and reported to the House. The Bill is of universal application, and does not contain any exception as to licensed premises in large towns, in the neighbourhood of theatres, etc., but this might be met by amendment.

Reduction of Licences and Compensation.

THE Irish Act of 1902, to which I have referred is a legislative recognition of the excessive number of licensed houses in Ireland. Some scheme for reduction is necessary; it will not do to rely on the operation of this Act, which will necessarily be too slow. Steps have been taken by licensing authorities in various parts of England to reduce the number, and there has been some co-operation on the part of the owners of licensed houses. But in England the licensing authority has a discretion as to granting renewals and transfers, which does not exist in this country as I pointed out in my former paper. The Commission recommends that the area for reduction and compensation should be in England and Ireland, the counties and the county boroughs. A fixed proportion of licenses to population is not recommended. The authority to decide what reduction should be made, should in England be the standing joint committee in counties, and a similarly constituted body in boroughs. In Ireland it should be the licensing authority constituted as recommended by the Commission. Evidence would be taken from the police and others as to the degree of congestion in each division, and local knowledge would be available to apply the reduction according to the varying needs of the different portions of the divisions. The licensing authority should report to the Home Secretary or Lord Lieutenant the reasons for their action or inaction, and such reports should be laid before Parliament. Reduction must, in the opinion of the Commission, be accompanied by compensation. "To suppress a proportion of the licenses without compensation, or for a fractional compensation, is to inflict very material loss on one set of licenses, arbitrarily selected, and to benefit the remainder by the elimination of their rivals. It is difficult to believe that any such measure would receive the assent of Parliament, or, if it did, that a licensing authority could be found willingly to undertake the invidious duty of selection." (Report, p. 51.) If this idea is correct as regards England, it is so *a fortiori* as regards Ireland, where the licensee has a legal title to get a renewal and to make a transfer, and has now by the recent Act prohibiting the granting of new licenses acquired a greater vested interest than before.

How then is compensation to be effected? It will be easier to deal with in Ireland, as the interests to be compensated are simpler and not so valuable. The tied-house system does not generally prevail; the houses are almost invariably owned by the

licensees themselves, and are purchased in almost every instance with money advanced at the ordinary market rate of interest by the different public banking institutions of the country. (Report, p. 56.) The compensation fund is to be raised from the trade itself, by taxation on the basis of the declared or ascertained value of the licenses and good will, apart from the value of the premises, upon which a charge should be levied, say of 6s. 8d. per cent., per annum. This fund might be increased by imposing an annual rent on new licenses, for a term of seven years, and adding it to the fund, the system to be worked by septennial periods, and a capital sum to be borrowed at the commencement of each period on the seven years' charges. When the amount of reduction in each division has been decided on, and the particular licences to be suppressed, compensation would be paid out of the fund to those interested in the licences suppressed according to the values previously ascertained. The local authority would have the option of taking the value as declared by the owner, or if dissatisfied with it of having it ascertained by arbitration. Hotels, restaurants and clubs should contribute to the fund. There were some dissentients from this recommendation in the Majority Report (to which I have been referring). Messrs. Walker and Hyslop object to the reduction and compensation scheme, as reduction may be left, they say, to time, and the action of the licensing authority; if there is to be compensation, the trade should not be taxed. They add that even since the year 1890, the trade has been paying a tax on beer and spirits which was intended to be applied to the buying up of superfluous licenses, but which has been diverted from that purpose, and the trade should not be taxed for a supposed public benefit from which the majority of the trade would derive no benefit whatever. Mr. Riley Smith is of opinion that the fund should come from the taxation of liquor. The reference to the year 1890 he points out was to Mr. Goschen's scheme of devoting certain taxation of liquor to the buying up of licences believed to be redundant, and while the license purchase scheme was ultimately dropped, the taxation to provide the money for that purpose was imposed, and has since been exacted, although the proceeds have been diverted to other uses.

The Minority Report says that the claim for compensation rests on no legal foundation, first, because there is no property in a licence, which lasts for a year and no longer (*Sharp v. Wakefield*), and secondly the licensing justices, as they can refuse to renew a license, can diminish the value of it by licensing the house next door. As a matter of grace or expediency, however, they recom-

mend that some compensation be given. This should be raised by a tax on the licensed houses themselves, namely, by taxing them on the basis of their annual rateable value and compensating them if deprived of their licences on the same basis. A period of seven years should be adopted for England and Wales under which the "on" licences should be reduced to a statutory maximum, say one licensed house to every 750 persons in towns, and 400 in country districts, the amount of the compensation required to be raised during the seven years from the remaining licence-holders by an annual licence rental levied on the rateable value of the licensed premises. The maximum compensation to be given should be seven years' purchase of the annual rateable value, the sum awarded to be apportioned between the parties interested, and the licensing authority to have power to borrow on the security of the license rentals, which should continue to be paid after the end of the seven years, to be used as Parliament should decide, being no longer required for a compensation fund. At the end of the seven years the licensing authority to have power to reduce the licences below the statutory maximum, and no compensation of any kind to be given. A similar scheme is recommended for Scotland, substituting five years for seven years, but there is no recommendation on this point as to Ireland (Report, p. 239). Dean Dickenson dissented from this part of the Minority Report because the scale of compensation proposed appeared inadequate; so did Sir W. Houldsworth, who also objected to fixing a statutory maximum. The reason why this reduction and compensation system is not recommended for Ireland probably is because there the value of the house as a licensed house was not taken into consideration in ascertaining the rateable value. At the present time, however, the valuation authority in Ireland adopts or proposes to adopt the English mode of valuation, but the general question of valuation in Ireland is under the consideration of Parliament, and will form an interesting subject for discussion in our Society when the Select Committee has finally reported. I may, however, quote a passage from the Final Report of the Commission on Local Taxation as to licensed premises (Report, April 11th, 1902, p. 16): "We understand that in the valuation of licensed premises in Ireland the value of the licence has not hitherto been taken into account. On this subject we need only repeat, as stated in our Report relating to England and Wales, that we concur in the principle that the additional value given to a building by reason of the occupier having a special privilege to carry on his trade ought to be fully taken into consideration in ascertaining what rent the hypothetical tenant would be willing to pay

for the building with the privilege attached, and unfettered by any agreement with the owner. We understand that the general revaluation lately undertaken in Belfast by Mr. Barton has been conducted on this principle."

Popular Control—Local Veto—Local Management.

LOCAL option, as it is called, has been for many years proposed as a remedy, that is to say (1) that the liquor traffic should be controlled by direct popular vote in the direction of limitation or total prohibition of the public sale of intoxicants, *i.e.*, by local veto, and (2) that the liquor traffic should be taken out of private hands and carried on under the control of the local authority. As to (1) Local Veto, the history of the proposal is discussed in the Minority Report of the Commission and the arguments *pro* and *con* are set forth. It is pointed out that it obtains in the United States, Canada, Australia, Norway and Sweden; that public opinion in Scotland and Wales is in favour of it, and that where local prohibition has been tried in districts in the United Kingdom by the action of ground landlords it has proved a success. The conclusion of the Commission is against such a scheme, at present at all events. They say that public opinion in England, whatever it may be in Scotland and Wales, is not strong enough to justify such a measure, and that it is better to postpone the further consideration of the question till it is seen how the plan for reduction of licences works. Mr. Whitaker's "Note on Direct Popular Local Control," reprinted as a pamphlet from his Memoranda attached to the Report of the Commission, contains valuable information on the subject. His view is that the simplest and most satisfactory form of local control would be obtained by submitting certain defined broad issues to the direct vote of the ratepayers. They could, for example, easily vote "Yes" or "No" on such questions as these: Should any licences be granted? Should bar licenses be granted? Should the number of bar licenses be reduced? If a maximum number of licenses were fixed by statute, the vote on these questions, he says, would show whether the ratepayers wished to reduce the number, also, whether they wished to abolish bar sales and leave only hotel, restaurant, and "off" licenses, or whether they wished to abolish all the licenses in their area.

The other scheme is to place the liquor trade in the hands of the local authorities, eliminate all motives of private profit from the scheme and appropriate the profits for the good of the community. The proposal is that there should be a committee of management either (1) a committee of the county or town council, or (2) a committee consisting

partly of town and county councillors, partly of representative persons elected by the council from outside, or (3) an authorised company, acting under the control of the council, and not allowed to take more than 3, 4, or 5 per cent. on their capital. The profits to be devoted wholly or partly to objects not supported by the rates, *e.g.*, institutions, recreation rooms, or anything calculated to diminish the causes of intemperance; or charities, *i.e.*, hospitals, or wholly or partly to the Imperial Exchequer. The advocates of this scheme point to the municipal company system, called the Gothenburg system, in Norway and Sweden, the action of the Russian government in taking into their own hands the sale of spirits over a large part of the country, and the military canteen system, in which latter case the profits are devoted to regimental purposes.

The arguments against this scheme are very strong, and it is not to be wondered that the Commission reported against it. Temperance advocates are strongly opposed to it, and great dangers would arise were local authorities tempted to try experiments of this class, on account of opportunities being offered to public bodies to make great pecuniary profit, to say nothing of grounds of public policy and the danger of corruption. Since the publication in 1899 of the Report of the Commission ample evidence has been afforded of the danger of encouraging municipal trading, and this form of it would be not the least objectionable.

It is a different question whether, inasmuch as public houses are not to be abolished, but only reduced in number, efforts for their improved management, whether by associations or individuals, should be encouraged.

In addition to military canteens, the Report of the Commission, p. 278, refers to other experiments on the same lines carried on by firms or public bodies or private individuals, *e.g.*, by the Birmingham Corporation for the navvies at their water-works near Rhyader, by the Fife Coal Company, and by a company called the People's Refreshment House Association. This association was established in 1896 for the promotion of temperance by reform in the prevailing system of liquor traffic as carried on in licensed houses. It seeks to lease existing public houses, to acquire new licenses at places where the growth of the population obliges the licensing magistrates to create new ones, and to establish canteens and refreshments bars where required on large public works, at collieries and elsewhere. In each house a carefully chosen manager is placed, who is paid a fixed salary, and is allowed no profit whatever on the sale of alcoholic drinks, but to make it his interest to sell non-intoxicants, in preference to beer

or spirits, he is allowed a profit on all trade in food and non-alcoholics. The aim of the association is to conduct the trade on the lines of a respectable house of refreshment at popular prices instead of that of a mere drinking bar. To guard against the evils of bad liquor, great care is taken that everything supplied is of the best quality. After paying a dividend not exceeding 5 per cent., on the capital (subscribed in the £1 shares), the surplus profit is devoted to objects of public utility, local or general. The Bishop of Chester was appointed chairman of the Council, and it had in 1901 fourteen inns under its management. The result of the working, so far as I have been able to ascertain, has so far been satisfactory.

This system has been widely extended in England by the formation of Public House Trusts, of which Earl Grey has been the active promoter. A vigorous attack has been made on this system by Mr. Malins, Honorary Secretary of the National Temperance Federation (see his pamphlet on the subject, entitled, "Public House Trusts and Liquor Municipalisation.") His main point is that these public-house trust companies are obtaining new licences as well as old ones, and are really encouraging the sale of drink. Giving the manager a fixed salary and a bonus on the sale of non-intoxicants does not, he urges, make him disinterested. It is his interest to push the trade done by the house, like a manager of any other business. Mr. Malins scouts the efforts of individuals to run public houses on these lines, and says that they only promote drunkenness, if they succeed at all. The *Monthly Review* of February, 1902, contains a good criticism by Lord Carlisle on Lord Grey's Public House Trusts. Time will not permit of illustrating this branch of the subject further. I may refer, however, to the fact that a bill has been introduced and discussed in the House of Commons this session for compelling innkeepers to supply food to customers, so as to make inns serve their original object, viz.:—a place of refreshment, not a mere resort for drink. Efforts have been made in the North of Ireland to work public-houses on the above lines, but I am not in a position to give details. These experiments to form public-houses on what may be called non-commercial lines may or may not succeed; time will tell, but surely no harm can be done to the community by allowing these experiments to be tried.

I have endeavoured in this paper to supplement the omissions in my former paper on this subject, and to bring before this Society the remaining recommendations of the Royal Commission, so far as they are applicable to this country, and to summarize the provisions of the measures

introduced by Irish members in the present session of Parliament to carry out some of these recommendations. It is impossible to exaggerate the importance of this question. The economic aspect of the drink problem has been well dealt with by Mr. Whitaker, M.P., in the Lees and Roper Memorial Lecture, delivered by him in St. James' Hall, April, 25th, 1902, to which I must refer those who are interested in this subject. Let me quote his concluding words: "If I have convinced you that civilization itself is menaced by this growing economic waste, let us each and all determine that, so far as in us lies, we will spare no effort to remove this gigantic evil from our midst, and wipe out the stain of this national degradation."

6.—*The Housing of the People of Ireland during the period 1841-1901.*

BY

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[Read Friday, 5th June, 1903.]

I PURPOSE this evening presenting to the Society a short review of the results of the inquiries made at each successive decennial Census from 1841, into the class of Houses in Ireland, and the accommodation afforded by them, with some observations regarding the results of the special investigation into the number of Tenements of less than five rooms made in connection with the Census of 1901.

Classification of Houses.

An inquiry into the number of houses in Ireland was instituted both in 1821 and 1831, in connection with the Census, but no attempt was made to ascertain the class of houses returned, or the accommodation afforded. The Commissioners of 1841 perceived the necessity for some effort in this direction, and framed a scheme of House Classification which has since been adopted at each successive Census.* The plan of classification may be thus described:—

The value or condition of a house, as to its quality, may be considered to depend mainly on:—

- 1st. Its extent, as shown by the number of rooms.
- 2nd. Its quality, as shown by the number of its windows, and

* As in the Census Tables for 1871, the classification adopted on previous occasions was departed from to a certain extent, the figures for that year have been omitted from this paper, they not being fairly comparable with those of preceding and subsequent Censuses.