Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Smith v. *McArthur and Others, from the Supreme Court of New Zealand; delivered the* 14*th May* 1904.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD LINDLEY.
LORD KINROSS.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

This is an Appeal from a Judgment of the Supreme Court of New Zealand, dismissing a motion for a Writ of Mandamus to the Licensing Committee of the Newtown District, to grant or, in the alternative, to hear and determine, the Appellant's application for the renewal of his license under "The Licensing Acts." The Court refused to do so on the ground that they had no jurisdiction to grant the application. The practical result of this decision is that, so far as the Newtown District is concerned, the Licensing Acts are brought to a deadlock. Existing licenses in the District cannot be renewed, and no new licenses in it can be granted.

The facts are as follows:—

The Appellant had for some time been the holder of a publican's license in respect of a hotel called the Park Hotel, and such license was on 4th June 1902 renewed for the year ending 30th June 1903. At the date of such renewal the hotel was situate in the Licensing District of Wellington Suburbs.

31770. 100.—5/1904. [27] A

Under a Proclamation by the Governor of New Zealand, dated 13th August 1902, and which came into effect on 5th November 1902, a new Electoral District was duly constituted under the name of the Newtown Electoral District, consisting of parts of the previous Electoral Districts of Wellington Suburbs and Wellington City and comprising the said hotel; and such new Electoral District thereupon became, under the provisions of the Licensing Act, 1881, and the Acts amending the same, a licensing district.

On the 5th December 1896, and again on 6th December 1899, licensing polls were duly taken under the Licensing Acts in each of the Districts of Wellington Suburbs and Wellington City, the result in each case being that the proposal that the number of licenses then existing should continue was carried. The license for the Park Hotel was duly renewed from time to time by the Licensing Committee for Wellington Suburbs District. The last of such renewals was on 4th June 1902, the license then issued being in force to 30th June 1903.

On 25th November 1902, a licensing poll of the electors of Newtown District was taken, under Section 4 of the Act of 1895, but subsequently on an enquiry, held pursuant to Section 7 (*o*) of the said Act and the Regulation of Local Elections Act, 1876, this poll was duly declared void on the ground of irregularities committed by the officers appointed by Statute to take it.

The Respondents were afterwards duly elected Members of the Licensing Committee for the Newtown District, and on 7th May 1903, the Appellant gave notice of his intention to apply, and on 5th June 1903, at the Annual Licensing Meeting for Newtown District, he applied to the Respondents for a renewal of his license. No

objection was lodged or made affecting the Appellant or his house, but the Licensing Committee refused his application and all other applications for licenses, holding that they had no jurisdiction to grant licenses or renewals of licenses within the district.

The Appellant and four other applicants then commenced Actions in the Supreme Court against the Respondents, the Licensing Committee, for a Mandamus (in each case) to the Respondents to grant (or in the alternative to hear and determine) the applications respectively.

The Appellant's motion for a Mandamus was heard (together with similar motions in the four other Actions) before the Supreme Court (consisting of Stout, C.J., and Denniston, Conolly, Edwards, and Cooper, JJ.) on 8th, 9th, 14th, 15th, and 16th July 1903. Judgment was reserved, and on 31st July 1903, the Court (by a majority of three Judges against two) gave judgment dismissing the Appellant's motion for a Mandamus with costs. Hence this Appeal.

The Licensing Acts which have to be considered are those of 1881, 1882, 1889, 1893, 1895, and 1902.

The difficulty which has arisen turns mainly on the true construction of Section 3 of the Act of 1895, taken in conjunction with Section 2 (3) of the same Act and of Section 21 of the Act of 1893. Their Lordships will deal with these presently, but it must not be forgotten that there is in New Zealand a statutory Interpretation Act (1888, No. 15). By Section 4 of that Act "Words importing the singular number "include the plural number." By Section 5 (clause 2) Amending Acts are to be read as incorporated with the Acts amended, and by clause 7 "Every Act and every provision or "enactment thereof shall be deemed remedial

" . . . . and shall accordingly receive such " fair, large, and liberal construction and inter- " pretation as will best ensure the attainment of " the object of the Act and of such provision " or enactment according to its true intent, " meaning, and spirit."

Passing now to the Sections of the Act of 1895 above referred to, Section 3 is clear and free from all ambiguity; it runs thus:—

" No license of any description shall be granted or renewed " until the electors of the district have previously determined " in manner hereinafter provided—

" (1) Whether the number of licenses existing in the " district is to continue.

" (2) Whether the number of licenses existing in the " district is to be reduced.

" (3) Whether no licenses are to be granted in the " district."

The " manner hereinafter provided " is to be found in Sections 4 to 7, and is by a poll of the electors of the district; which poll (called the " licensing poll ") is to be taken on the day appointed for the electoral poll and simultaneously with such poll.

If this Section stood alone there could be no renewal of the Appellant's license until a licensing poll for the Newtown District had determined the questions above mentioned, and, so long as there is no licensing poll for that District there can be no renewal.

But Section 2 (3) says that " Section 3 of " this Act shall not come into operation until " the day next before the day appointed for " the . . . licensing poll first taken after the " commencement of this Act." This, it will be observed, is a postponing Section only. But the effect of the two Sections together seems plainly to be that Section 3 is to come into operation on the day appointed for the licensing poll described in Section 2 (3), as the licensing poll first taken after the commencement of the Act. The Act came into operation on the 31st October

1895. It is evidently assumed, however, that the licensing poll referred to will be taken. The contingency that there will be no poll, or that the poll taken in fact will be legally null and void, seems, however, to be covered by Section 8 (4) which is as follows:—

"If the Returning Officer finds—

"That none of the proposals respecting licenses in the "district is carried by the prescribed majority,

"Then he shall notify the Licensing Committee thereof, "and the number of licenses shall continue as they are "until the taking of the next licensing poll, subject "nevertheless to the power of refusing to renew licenses "objected to under Sub-sections 1–4 inclusive of "Section 81 of the principal Act" (the Act of 1881), "and "subject also to the provisions of the Licensing Acts "relating to forfeiture or increase of licenses."

In connection with these sections there is another specially applicable to new districts, viz., Section 21 of the Act of 1893. This Section is as follows:—

"Where a district constituted under this Act or the principal "Act has been abolished or altered, and has been constituted "or divided into new districts, the poll in force in such first-"mentioned district at the time of such abolition or alteration "shall continue and remain in force in such new districts "until the period arrives for taking the next triennial poll, "and shall have the same force and effect as if such poll had "been taken in such new districts."

Although this Section speaks of "a district," the Interpretation Act already referred to justifies a construction which will make the Section applicable to one or more new districts constituted out of two or more previously existing districts. The Section is as much required in the last case as in the case of a subdivision of only one district, and although it may be true that the Section was inserted to meet the inconvenience arising from the creation of new districts out of one old district, their Lordships see no reason for confining this Section to that particular case.

The object aimed at by the Legislature is plainly apparent from the enactments above

referred to. Subject to any objections which might be made to any particular licensee or house, the object of the Legislature plainly was to continue in every district and new district formed out of it, all existing licenses, until a licensing poll should have decided which of the three courses mentioned in Section 3 of the Act of 1895 should be pursued in that district. The difficulty of giving effect to this intention in this particular case is due entirely to the fact that Section 2 (3) is so expressed as to postpone the operation of Section 3, not to the decision of the poll, but to the day before the day appointed for taking it. But Section 8 (4) shows that existing licenses may, in certain cases, continue in force beyond that day.

The language of Section 21 of the Act of 1893 is more elastic than the language of Section 2 (3) of the Act of 1895. In both cases, however, the language points to a time rather than to the event which was to happen at that time, but the event, *i.e.* the result of the poll, is the governing factor. To ignore this, and to adhere to language so literally as to defeat the plain intention of the Legislature instead of so construing the words as to give effect to that intention, is to run counter to Section 5 (7) of the Interpretation Act, which, after all, only expresses what is meant by the old legal maxim *Qui haeret in littera haeret in cortice.*

Their Lordships will therefore humbly advise His Majesty to allow the Appeal, and to order a Mandamus to issue to the Licensing Committee to hear and determine the Appellant's application and to order the Respondents other than Alexander McArthur, who was a nominal Defendant only, to pay the costs of the action.

The Respondents, other than the first Respondent (Alexander McArthur), must pay the costs of the Appeal.