

[HOUSE OF LORDS.]

SUSANNAH SHARP	APPELLANT;	H. L. (E.)
	AND	1891
WAKEFIELD AND OTHERS	RESPONDENTS.	March 20.

Inn—Licensed Persons—Public-house—Renewal of License—Discretion—Magistrates—Licensing Acts, 1828, 1872, 1874 (9 Geo. 4, c. 61, s. 1, 35 & 36 Vict. c. 94, s. 42, 37 & 38 Vict. c. 49, s. 26).

On the hearing of an application for the renewal of a license for the sale of intoxicating liquors under the Licensing Acts 1828, 1872, and 1874, the licensing justices have a discretion to refuse the renewal on the ground of the remoteness from police supervision and the character and necessities of the neighbourhood.

The decision of the Court of Appeal (22 Q. B. D. 239) affirmed.

APPEAL from an order of the Court of Appeal (22 Q. B. D. 239) affirming an order of the Queen's Bench Division (21 Q. B. D. 66).

The following are the material parts of a case stated for the opinion of the Queen's Bench Division by William Henry Wakefield, Chairman of Quarter Sessions for the county of Westmorland:—

On the 10th of September 1887 William Ridding duly applied to the Licensing Justices for the Kendal Division of Westmorland for a grant by way of renewal for the sale by him of all intoxicating liquors at the Low Bridge Inn, at Kentmere, in the county of Westmorland, and was refused such renewal.

Susannah Sharp, the owner of the inn, and a person aggrieved by such refusal, appealed in due form of law to the Quarter Sessions holden at Kendal, and the appeal was heard on the 21st of October 1887.

On the part of S. Sharp it was contended that on the hearing of an application for the renewal of a license under the Intoxicating Liquor Licensing Acts, 1828, 1872, and 1874, the Court

H. L. (E.) was not by law entitled to inquire into the character and wants of the neighbourhood, or to refuse a grant by way of renewal upon such grounds.

1891
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 SHARP  
 v.  
 WAKEFIELD.  
 —

The Court of Quarter Sessions overruled this contention, and after hearing evidence refused to renew the license on the ground of the remoteness from police supervision and the character and necessities of the locality and neighbourhood in which the inn is situate.

The question of law for the Court is whether the Court of Quarter Sessions was entitled to refuse the renewal upon the grounds stated.

If it were not so entitled the order of sessions is to be quashed, but if the Court should be of the contrary opinion then the order is to be affirmed.

An order nisi to quash the Order of Sessions on the ground of insufficiency was granted by the Queen's Bench Division, but was on the 30th of April 1888 discharged by Field and Wills JJ., and their decision was on the 15th of December 1888 affirmed with costs by the Court of Appeal (Lord Esher M.R., Fry and Lopes L.JJ.)

1891. Jan. 30, Feb. 2, 3. *Henn Collins* Q.C. and *Candy* Q.C. (*L. Sanderson* with them) for the appellant:—

The question is whether in a district where the justices have licensed more public-houses than are required for the wants of the inhabitants they can refuse the renewal of his license to a particular licensed person who is a fit and proper person and who has perhaps spent large sums of money in expectation of the renewal. The legislature cannot have intended to inflict such a loss of property. On a renewal, as distinguished from an original grant, of a license the only question for the justices is the fitness of the person and perhaps of the premises. The first Act for consideration is the Licensing Act of 1828 (9 Geo. 4 c. 61) which consolidated previous Acts. By sect. 1 the justices are to hold a general annual licensing sessions, and are empowered to grant licenses to such persons as they shall in the exercise of their discretion “deem fit and proper.” But for the decisions it would now be contended that those words must be read literally

and that the discretion is limited to the fitness of the persons and the premises, but the authorities have long held that the needs of the neighbourhood might be considered. Sect. 4 provides for the transfer of licenses. Sect. 9 shews that the fitness "of the house intended to be kept" was a question for consideration. Sect. 10 provides for notices to be given as to applications for licenses, and sect. 14 for cases of death and other contingencies. Sect. 27, which gave a right of appeal to the Quarter Sessions from any act of the justices, is repealed by the second schedule of the Licensing Act 1872 except in so far as it relates to the renewal or the transfer of licenses. This repeal shews that the legislature intended to make a distinction between original grants of licenses and renewals of old. The schedule of the Act of 1828 gives the form of license, which is to a named person to sell &c. in a named house.

Then came the Licensing Act 1872 (35 & 36 Vict. c. 94). Sect. 30 deals with the disqualification of persons and premises by offences, and sect. 36 with registers of licenses, owners, premises, offences, &c. Sects. 37 and 38 introduce a new scheme as to the grants of new licenses, enacting that such grants shall not be valid either in counties or boroughs until confirmed by the county licensing committee and the whole body of borough justices respectively. No such confirmation is required in the case of renewals: and this is another distinction introduced by this Act. Sect. 42 makes the distinction even more marked: a licensed person applying for a renewal need not attend at the annual licensing meeting unless required by the justices; and no objection to the renewal shall be entertained unless written notice has been served on him. The words "subject as afore-said" in the last paragraph shew that the discretion of the justices is to be exercised subject to the marked distinction between new licenses and renewals above pointed out: a licensed person is in a different category from a new applicant. Sect. 48 deals with the form of licenses and renewals, sub-sect. 2 enacting for the first time that a renewal may be made by an indorsement on the old license, or by the issue of a copy of the old license. Sect. 49 deals with six-day licenses, sect. 50 with removals, and sect. 56 with notice to owners of licensed premises in case of

H. L. (E.)

1891

SHARP

v.

WAKEFIELD.

H. L. (E.) offences by tenants. Sect. 74 again distinguishes between new licenses and renewals, defining both.

1891

SHARP

v.

WAKEFIELD.

Then came the Licensing Act, 1874 (37 & 38 Vict. c. 49). Sect. 22 deals with the provisional grant and confirmation of a license for a house about to be constructed in accordance with plans to be approved by the justices, which grant and confirmation are not to be valid unless declared to be final after the justices are satisfied that the house has been completed in accordance with the plans, and that no objection can be made to the character of the holder of the provisional license. The provisional license once granted, no objection can be taken on the ground that the house is not required for the wants of the neighbourhood; the legislature thus shewing that a person once licensed is regarded as one who having spent his money has earned a title to a license, defeasible only on the ground of unfitness.

Sect. 26 makes the distinction plainer: whereas by the Act of 1872, s. 42, no licensed person need attend unless required by the justices, now he shall not be required "save for some special cause personal to the licensed person:" i.e. for some objection to him personally, his character and fitness, and perhaps the fitness of the premises. It is suggested that these words have a wider meaning and were intended to alter the practice of requiring all holders of licenses to attend: but the appellant does not admit that since 1872 any such practice existed. Before 1872, no doubt, all holders were practically required to attend by sect. 12 of the Act of 1828. Looking at the whole course of legislation, even if the justices had under the Act of 1828 a discretion to refuse a renewal for any reason other than the fitness of the person or the premises (which it is contended they had not), they have no such discretion under the Acts of 1872 and 1874. The publican is the best judge whether the neighbourhood requires a particular house, i.e. whether it will pay to set it up; if he is willing to risk his money why should he not? Suppose two licensed houses in one district, and an objection to both on the ground that the population is diminished and only one is now needed; there would be great practical difficulty in determining which renewal to refuse. If the granting of a

license is not an actual bargain between the justices and the publican, he has at least a reasonable expectation of renewal: a refusal is harsh towards the publican who has spent his money and those behind him whose manager he is. The appellant's construction of the Act meets all the mischief aimed at: if a publican loses all his custom he ceases to be a fit and proper person, and the justices have a discretion to refuse a renewal.

As to the authorities, the most recent case, *Reg. v. Justices of Market Bosworth* (1), and *Reg. v. Justices of Liverpool* (2), contain dicta in favour of the appellant's contention. So do *Day v. Luhke* (3); and *Reg. v. Recorder of Dublin* (4). *Ex parte Martin* (5) is no doubt a decision the other way, but it should be overruled.

*Addison Q.C.* and *Poland Q.C.* (*James Paterson* with them) for the respondents:—

Long before the Act of 1828 the principle was established that the justices had the discretion which the appellant disputes: *Rex v. Young and Pitts* (6). The first Act on the subject was 5 & 6 Edw. 6 c. 25, which gave the justices an absolute discretion to "remove, discharge and put away" the selling of ale and beer where they should think meet and convenient. That Act and others which followed shewed the intention of the legislature to promote temperance and do not support the contention that a license was regarded as property. The previous Acts were consolidated by the Act of 1828, which by sect. 1 distinctly treats "persons keeping" and "persons about to keep" inns, ale-houses and victualling houses, on the same footing. That Act gave the widest discretion to the justices in granting licenses, and the Acts of 1872 and 1874 in no way limit that discretion. The words in the Act of 1874 "for some special cause personal to the licensed person" mean some cause affecting himself; i.e. he shall not be required to attend unless his own license is objected to: but for this enactment every licensed person might be, and in some places was, required to attend at every licensing

H. L. (E.)

1891

SHARP

v.

WAKEFIELD.

(1) 56 L. J. M. C. 96.

(2) 11 Q. B. D. 638.

(3) Law Rep. 5 Eq. 336, 344.

(4) Ir. Rep. 11 C. L. 412, 430.

(5) 40 J. P. 133.

(6) 1 Burr. 556.

H. L. (E.) sessions though he was not personally interested. *Reg. v. Smith* (1) is a distinct and strong decision against the appellant. Where the Legislature intended to limit the discretion of justices it expressed the intention plainly, as in the Wine and Beerhouse Act 1869 (32 & 33 Vict. c. 27) ss. 8, 19.

1891  
SHARP  
v.  
WAKEFIELD.

The judgments of the Divisional Court and of the Court of Appeal state the reasons for the respondents' contention.

[They also relied on *Reg. v. Justices of Lancashire* (2); *Boodle v. Justices of Birmingham* (3); *Griffiths v. Justices of Lancashire* (4).]

*Henn Collins* Q.C. replied.

[LORD HALSBURY L.C. In view of the importance of the case, their Lordships will take time to consider the form of their decision.]

March 20. LORD HALSBURY L.C.:—

My Lords, I do not think at any period of the argument any of your Lordships doubted but that this judgment must be affirmed.

By the express language of the statute which is still the governing statute, the grant of a license is expressly within the discretion of the magistrates. For reasons to be stated presently, I am of opinion that no legislation has ever altered that provision; but if one were to argue a priori, what possible reason could there be for limiting the discretion of the justices to the first grant of the license? It is not denied that for the purpose of the original grant it is within the power and even the duty of the magistrates to consider the wants of the neighbourhood with reference both to its population, means of inspection by the proper authorities, and so forth.

If this is the original jurisdiction, what sense or reason could there be in making these topics irrelevant in any future grant? It surely must have been in the contemplation of the legislature that the circumstances of a neighbourhood might change, a population might diminish or increase. Would it be argued

(1) 48 L. J. M. C. 38.

(2) Law Rep. 6 Q. B. 97.

(3) 45 J. P. 635.

(4) 51 J. P. 453; 35 W. R. 732.

that if the population had very much increased at some point where by reason of its previous want of population no such public accommodation had been hitherto granted, no license should be granted because this additional grant might to some extent interfere with the practical monopoly enjoyed by the persons already licensed? This of course could not be argued since it is the well-understood practice to do this very thing. But can anything be more unreasonable than the suggestion that the legislature had given the discretion in one direction and withheld it in the other?

In real truth a great deal of the argument addressed to us on the part of the appellant has been less addressed to us upon the true construction of the Act of 1828, or the statutes which have followed it, but rather to some supposed injustice which the argument assumed would be so great if the matter were left to the discretion of the justices, that the legislature never could have intended to have entrusted them with a discretion so wide. I do not think that if the injustice were so great as it is suggested by the argument, that consideration could prevail over the plain language of the legislature. But I am not able to assent to the notion that the injustice is so great.

An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and "discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's Case* (1); according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself: *Wilson v. Rastall* (2). So in *Reg. v. Boteler* (3), where justices thought proper not to enforce the law because they considered that the Act in question was unjust in principle, the Court of Queen's Bench compelled them by a peremptory order to do the act which nevertheless the statute had said was in their discretion to do or leave undone. So, again, in the case of overseers who

H. L. (E.)

1891

SHARP

v.

WAKEFIELD.

Lord Halsbury,  
L.C.

(1) 5 Rep. 100, a.

(2) 4 T. R. at p. 757.

(3) 33 L. J. M. C. 101.

H. L. (E.) were required by 3 & 4 Vict. c. 61, to certify whether applicants for beer licenses were real residents and ratepayers of the parish, it was held that they were not entitled to refuse the certificate on the ground that in their opinion there were already too many public-houses, or that the beer shop was not required. So a discretion which empowered justices to grant licenses to inn-keepers as in the exercise of their discretion they deemed proper would not be exercised by coming to a general resolution to refuse a license to everybody who would not consent to take out an excise license for the sale of spirits: *Reg. v. Sylvester* (1).

1891  
 SHARP  
 v.  
 WAKEFIELD.  
 Lord Halsbury,  
 L.C.

Again, justices were authorised to alter the hours for the sale of intoxicating liquors in any particular district; but it was held that though this was a general discretion given to them they had no right by virtue of a general resolution to alter the time in every case. They were required judicially to determine (although according to their discretion) what places, in the honest exercise of their judgment, required other hours for opening and closing than those specified. The question arose, in the case to which I am referring, on the proviso to sect. 2 of 25 & 26 Vict. c. 35, which was in these words: "Provided always that in any particular locality within any county, or district, or burgh, requiring other hours for opening and closing inns and hotels and public-houses than those specified in the forms of certificates in said schedule applicable thereto, it shall be lawful for such justices or magistrates respectively to insert in such certificates such other hours, not being earlier than six of the clock or later than eight of the clock in the morning for opening, or earlier than nine of the clock or later than eleven of the clock in the evening for closing the same, as they shall think fit." Eleven of the clock at night was accordingly the hour appointed for closing public-houses in Scotland, and the magistrates of Rothesay issued an order closing them at ten o'clock instead of eleven. Lord Selborne, in giving judgment in the House of Lords in that case, makes these observations: *Macbeth v. Ashley* (2): "Without meaning to deny that it is confided to the discretion of the magistrates to determine what particular localities require other hours for opening and closing than those

(1) 31 L. J. M. C. 93.

(2) Law Rep. 2 H. L., Sc. at p. 360.



specified, it is obvious that such discretion as they have is not an arbitrary discretion to define any localities they please, but they must be such localities as they consider, in the honest and bonâ fide exercise of their own judgment, to require a difference to be made. The participle 'requiring' is connected with the substantive 'locality,' and therefore it must be a requirement arising out of the particular circumstances of the place. The magistrates must, in the exercise of an honest and bonâ fide judgment, be of opinion that the 'particular locality' which they except from the ordinary rule is one which, from its own special circumstances, requires that difference to be made."

I do not feel, therefore, though the language of the statute and the power given by that language is so great and so unqualified, that the mischief or danger apprehended by the appellant is at all likely to arise. The legislature has given credit to the magistrates for exercising a judicial discretion—that they will fairly decide the questions submitted to them, and not by evasion attempt to repeal the law which permits public-houses to exist, or evade it by avoiding a plain exposition of the reasons on which they act.

My Lords, I am very far indeed from saying that, assuming the complete discretion that I have indicated to exist, it would be likely that the persons exercising it would consider an original application in the same way as one which was applied for by the person who has already been licensed for one year. Of course, the justices would remember that a year before a license had been granted and presumably (unless some change during the year was proved) they start with the fact that the topics to which I have referred have already been considered, and one would not expect that those topics would be likely to be reopened, unless, as I say, some change has been proved. This would be likely to limit the inquiry to the conduct of the house and the character of the licensee, and, perhaps, the condition of the house, but as matter of fact and not as matter of law at all.

My Lords, as to the question of law arising upon the language of all the statutes, it may, in my judgment, be very shortly disposed of. The first statute to which we need go back, it is admitted, gives discretion. Does any Act passed since purport

H. L. (E.)  
1891  
SHARP  
v.  
WAKEFIELD.  
Lord Halsbury,  
L.C.

H. L. (E.) to withdraw it? Certainly not. On the contrary, the Acts referred to expressly retain it, subject to certain provisions which it cannot be pretended affect to exclude the topics which, it is argued, are topics irrelevant to a renewal.

1891  
SHARP  
v.  
WAKEFIELD.  
Lord Halsbury,  
L.C.

Now, I do not mean to say that a repeal or qualification may not sometimes be implied by subsequent statutes enacting something inconsistent with a previous Act, but in a matter so constantly before the legislature as the licensing laws, I cannot but think that if it was intended to alter the law in this respect it would have been done in plain and unambiguous language. Now, the Acts of 1872 and 1874, which are the Acts upon which reliance is placed, do not profess to limit the discretion, but enact certain new procedure—all of which procedure is perfectly consistent with the preservation intact of the discretion given to the magistrates. I do not think it is necessary to go into details as to the alteration of procedure—it is merely procedure. It leaves the earlier Act absolutely untouched upon the subject now in debate, and I entirely approve of and adopt the decision of Cockburn, C.J., and Mellor, J., arrived at thirteen years ago.

I, therefore, think that this appeal ought to be dismissed with costs.

LORD BRAMWELL:—

My Lords, I think this a very plain case, and that the judgment should be affirmed. Houses of public entertainment and for the sale of drink have been in this country and in many others the subject of regulation for police purposes; not for what one may call economic purposes, like the fixing of the price of bread or the wages of labour, but for the maintenance of order. And naturally the buildings themselves, their character, their number, and their neighbourhood have been considered as well as the persons who should be permitted to carry on the trade or business. That certainly has been the case in England; and it is undoubtedly so now with respect to licenses granted to sell drink on premises for the first time. This is so clear that the learned counsel for the appellant have not contended to the contrary. If an application is made for a license to sell drink on premises not before licensed, it is certain that the magistrates may refuse

it, and may refuse for the reason and no other than that they think the neighbourhood does not need it; that none is needed, or none in addition to the houses already licensed. But it is said that this power or right in the magistrates does not exist where a license has been granted and the question is whether it should be renewed. I am not sure that this contention might not be met by this. The magistrates have a discretion to refuse; they are not bound to state their reason, and therefore their decision cannot be questioned. But I think it better to say that in my judgment if they had to state their reasons, it would be a good one in point of law that they refused to renew on the ground of the remoteness from police supervision and the character and necessities of the locality and neighbourhood in which the said inn is situate. Of course, the finding of the facts by the sessions is conclusive.

H. L. (E.)  
1891  
SHARP  
v.  
WAKEFIELD.  
—  
Lord Bramwell.

Two objections are raised by the appellant. One is, that though by the Act 9 Geo. 4, c. 61, the above might be a good ground for a refusal of a license applied for for the first time, it is not for a refusal of its renewal. Why, I know not. I quite agree that different considerations should operate on the minds of the justices, and, I doubt not, do. The hardship of stopping the trade of a man who is getting an honest living in a lawful trade, and has done so, perhaps, for years, with probably an expense at the outset, may well be taken into consideration; but it must be done so in conjunction with considerations the other way, and must be left to the discretion of the justices. The license is a renewal. That word has been criticised. It may be misleading, but is, I think, correct. It is a "renewal"—i.e., a new license, as we talk of a new lease being a renewal, though parties and terms may be wholly different. And one cannot help seeing this, that if the discretion was to be limited, as contended in the case of a renewal, the legislature might have said so in terms, and has not. Whenever that is the case it seems to me that Courts ought not to put a limit on general words without almost a necessity for doing so.

The other objection is that subsequent legislation has shewn that Parliament intended there should be a difference between the treatment of original applications for a license and

H. L. (E.) applications for renewals, and has shewn that it intended the  
 1891  
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 SHARP at all events, that its renewal should not be refused for such a
 v.
 WAKEFIELD. reason as existed in this case, and so the power to refuse on that
 Lord Bramwell. ground has been taken away by the legislature. I cannot find
 ——— this. I do find, indeed, that the legislature in its subsequent
 Acts contemplated that as a rule, as a practice, licenses would be
 renewed. But there is nothing to shew that the discretion to
 refuse is taken away. The word “personal,” so much relied on,
 means “individual,” as distinguished from the class to which he
 belongs. And I repeat my remark that it could have been so
 enacted, and there is nothing to justify implying such a repeal.

Indeed, I think this argument presents a consideration unfavourable to the appellants. The legislature has most clearly shown that it supposed, contemplated, that licenses would usually be renewed; that the taking away of a man’s livelihood would not be practised cruelly or wantonly. True, and because it shewed that plainly it may have felt it safe to leave an absolute discretion with the justices, a discretion that would be discreetly exercised. And it has been. I do not say in this case, I know nothing about it; I mean by justices generally. That is shewn by what was mentioned by Mr. Poland, viz., that at the sessions, when there is an appeal against a refusal of a first license, the appellant begins, the burthen of proof is on him, he has to make out that he ought to have a license. Where, on the other hand, the appeal is against a refusal to renew a license, the respondents begin, the burthen of proof is on them, they have to make out that he ought not to have a license; practically, that his license should be taken from him. This, Mr. Poland says, is the practice throughout England. One may well suppose this to be known to the legislature, and to be one cause why the justices are trusted with such extensive power.

For these reasons, I think the appeal should be dismissed. Thinking, indeed, that the legislature contemplated that ordinarily licenses would be renewed, and have most strongly shewn that, but thinking also that that does not help the appellant’s counsel to shew, and that they have not shewn that a renewal may not be refused for the reason given in this case.

LORD HERSCHELL :—

H. L. (E.)

My Lords, the sole question for decision in this case is, whether where a license is applied for, by way of renewal, by one who already holds a license for the sale of intoxicating liquors, the licensing authorities are entitled to take into consideration the wants of the neighbourhood and the remoteness of the premises from police supervision, or whether their inquiry must be limited to the character and conduct of the applicant, and they can only refuse the applicant on the ground of his personal unfitness.

1891
SHARP
v.
WAKEFIELD.

It was admitted by the learned counsel for the appellant that there was authority for the proposition that a complete discretion had been vested in the justices to grant or withhold any application for a new license, though they somewhat faintly contended that, upon the true construction of the first section of 9 Geo. 4, c. 61, this discretion was confined to the question whether the applicant was a fit and proper person to hold the license, and whether the premises in respect of which he made the application were suitable for the purpose. It is to my mind abundantly clear that this is not a correct view of the statute. Giving to the language used its natural interpretation, I think it impossible to do otherwise than hold that the discretion of the justices is not in any way fettered.

When once this conclusion is arrived at, it seems to me to follow that the justices had under the statute of Geo. 4 the same discretion when the holder of a license applied for another license for the ensuing year. It is by virtue of the very same enactment that the justices are empowered to grant such a license. The statute makes no distinction between this case and the original application. The word "renewal" is never mentioned, and it is expressly provided that every license granted under the authority of the Act shall last for one year "and no longer."

But it was argued that the law had been modified by subsequent legislation, and this was the point mainly insisted upon on behalf of the appellant.

The Licensing Act of 1872, has, it is true, by sect. 42, altered in some respects the procedure provided in relation to applications for licenses by the statute of Geo. 4. But the

H. L. (E.) alterations have reference to matters of procedure only. Under the earlier Act, the applicant for a license was required to attend in person unless hindered by sickness, infirmity, or other reasonable cause. The Act of 1872 provided that in case of an application for the renewal of a license, the applicant need not attend in person at the annual licensing meeting, unless required by the justices so to attend. It also contained enactments securing to the applicant for a renewal of his license notice that objection was taken to such renewal, and prescribed that no evidence with respect thereto should be received by the justices that was not given on oath.

1891
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 SHARP
 v.
 WAKEFIELD.
 ———
 Lord Herschell.
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These provisions would obviously have left the discretion of the justices just what it had been before, even if the statute had not gone on, as it does, to provide that, subject thereto, licenses should be renewed, and the powers and discretion of justices relative to such renewal should be exercised as theretofore. But it was said that the amendment of s. 42 of the Licensing Act, 1872, enacted in sect. 26 of the Licensing Act, 1874, had the effect of limiting the power of the justices and prohibiting them from refusing to grant a renewal of a license save for some cause personal to the applicant. The enactment in question certainly does not in terms contain any such provision, and I do not think it is possible to infer from the language used that the legislature intended thus to alter the law. The section, after reciting that it was enacted by s. 42 of the Act of 1872, that an applicant for the renewal of his license need not attend in person at the annual licensing meeting, unless required by the licensing justices so to attend, enacts "that such requisition shall not be made save for some special cause personal to the licensed person to whom such requisition is sent." I think the object of this provision is obvious. Under the earlier Act, the justices at any sessions might (or at the very least it was open to contention that they might) have required all applicants for a renewal to attend as before. The later Act prescribes that no such requisition is to be made except for some special cause personal to the recipient of the requisition.

The cause, it will be observed, is to be a cause requiring the individual to be present, and the fact that objection was taken

to the renewal of his license would be such a cause. The language of the statute has no reference to the causes which, when the applicant attends in pursuance to the requisition, may operate in the minds of the justices to determine whether his application shall be acceded to or not.

For these reasons I think that the judgment of the Court below was correct and ought to be affirmed.

There is one observation made by my noble and learned friend the Lord Chancellor, to which I am not prepared to give my assent without qualification. I do not think the fact that a license had been granted for the previous year would be sufficient ground for the justices presuming that the licensed house was then needed and considering only whether the circumstances had changed in the interval. It might well be that the attention of the licensing justices had not on the former occasion been called to the condition and wants of the neighbourhood.

H. L. (E.)
1891
SHARP
v.
WAKEFIELD.
Lord Herschell.

LORD MACNAGHTEN :—

My Lords, for the reasons which have been stated by my noble and learned friends, and which it is unnecessary for me to repeat, I also am of opinion that it is clear beyond the possibility of doubt or question that the Act of 1828 conferred upon the licensing justices the same discretion in the case of an application for what is now termed a renewal, as in the case of a person applying for a license for the first time, and that there is nothing in the subsequent legislation to do away with or impair or fetter that discretion, although there has been an alteration in procedure in favour of applicants for renewed licenses.

LORD HANNEN :—

My Lords, I do not consider it necessary to occupy your Lordships' time with observations on the 9 Geo. 4, c. 61. It was long ago decided, and I think rightly decided, that the justices were under that Act entitled and bound to consider the needs of the neighbourhood on an application for a license to a person seeking to keep a house for the sale of exciseable liquors, and that their discretion was equally wide in the case of a person already

H. L. (E.) keeping such a house, as in one where the application was by a person not before licensed.

1891

SHARP

v.

WAKEFIELD.

Lord Hannen.

But it was contended that the general discretion given by the Act of Geo. 4 was restricted by the Act of 1872 (35 & 36 Vict. c. 94), and by the Act of 1874 (37 & 38 Vict. c. 49). By the first of these Acts the renewal of licenses is dealt with, and by the 42nd section certain changes are made in the procedure where a renewal is asked for. (1.) The applicant need not attend in person unless required by the justices to do so. (2.) No objection to the renewal is to be entertained unless written notice of the intention to oppose has been served seven days before the meeting, and (3.) Evidence with respect to the renewal shall be given on oath. But the section concludes: "Subject, as aforesaid, licenses shall be renewed, and the power and discretion of justices relative to such renewal shall be exercised as heretofore." This, therefore, clearly leaves the discretion of the justices unfettered, where the provisions of the 42nd section have been complied with.

The argument for the appellant was chiefly based on the qualification of the above-mentioned 42nd section of the Act of 1872, added by the first clause of the 26th section of the Licensing Act of 1874 (37 & 38 Vict. c. 49). That clause is as follows: "Whereas by sect. 42 of the principal Act, it is enacted that a licensed person applying for the renewal of his license need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend. Be it enacted that such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent."

Rightly to understand this enactment it is necessary to revert to the earlier legislation on the subject of the personal attendance of applicants for licenses. By the 12th section of the Act 9 Geo. 4, only those applicants were excused from personal attendance who could prove by sworn testimony that they were hindered by sickness, or infirmity, or by any other reasonable cause, in which case an authorized person might attend for them. The 42nd section of the Act of 1872 excused the applicant for a renewal of his license from attendance unless required by the

justices. This left it in the power of the justices to require the attendance of all applicants for renewed licenses. This power might be exercised so as to cause inconvenience to applicants required to attend on grounds not having reference to their particular case.

Instances have been brought before the Courts where justices have expressed and acted upon a general intention with regard to all licenses, whereas it is their duty to consider each individual case on its own special merits. The object of the 26th section of the Act of 1874 appears to be to enforce this duty, and to require the justices to particularise the special ground on which they consider the personal attendance of the applicant necessary. The word "personal" is fully satisfied by construing it as meaning "for a cause in which the applicant is personally interested, and not merely interested as one of the general body of licensed persons."

For these reasons it appears to me that the judgment appealed from is correct and should be affirmed.

Judgment appealed from affirmed, and appeal dismissed with costs.

Lords' Journals 20th March 1891.

Solicitors for appellant: *Peckham, Maitland, & Peckham, for F. W. Watson, Kendal.*

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H. L. (E.)

1891

SHARP

v.

WAKEFIELD.

Lord Hannen.