

LIQUOR LICENSE ACT.

There is another view in which this question may be tested, and from which we may see what may be included within the expression "the premises known as 'Fraser House.'" It was competent for the appellant to apply or and obtain one of two licenses, (the license by wholesale being now abolished) viz. : a tavern licence such as he has, or a shop license, (see sub-sections 2 and 3 of section 2 of the Act, sub-section 4 is repealed). "A tavern license" must be construed to mean a license for selling, bartering, or trafficking, by retail in fermented, spirituous or other liquors in quantities of less than one quart *which may be drunk in the inn*, ale, or beer house, or other house of public entertainment in which the same liquor is sold. "A shop license" must be construed to mean a license for selling, bartering, or trafficking by retail in such liquors in shops, stores, or places other than inns, ale or beer-houses, or other houses of public entertainment, in quantities not less than three half-pints at any one time, to any one person, and at the time of sale to be wholly removed and taken away in quantities not less than three half-pints at a time. Then if the appellant had opened a shop at the Fraser House, as he might have done, he would be entitled to this shop licence, which would have authorized him to sell those liquors by retail in prescribed quantities, provided that the liquors sold were *not consumed, but wholly removed and taken away from his premises*. Then supposing the removal and taking away consisted in carrying the liquors from the hostelry or dwelling-house to the house where the respondent contends by this prosecution he has no right to sell, I am of opinion, on the authority of decided cases, the appellant might be complained of, and properly convicted for selling illegally, and allowing liquors so sold to be consumed on the premises, and what may be construed as part of the *restricted or prohibited* premises for one purpose must be regarded as part of the *licensed* premises for the other purpose. The Interpretation clause of the Act (section 2) gives as the meaning of the expression "Tavern License," viz. : a licence for selling, bartering, or trafficking by retail "in quantities less than a quart all kinds of liquors *which may* (it does not say *must*) be drunk in the Inn, Ale, or Beer-house, or other house of public entertainment in which the same liquor is sold." Now the selling is the

act of the licensee, and the drinking is the act of the purchaser—so that if the license be to sell *on the premises* and to allow to be drunk *in the Inn, &c.*, the liquor so sold, I cannot see why the inn-keeper may not sell the liquor on the premises to be drunk anywhere the purchaser pleases. I think no one ever doubted the right of an inn-keeper to sell liquor to a passing traveller who might choose to stop at his door and call for a glass of ale and serve it up to him sitting on his horse on the public highway outside his house, because it would be answering the purpose of his calling to do so, nor can I see any reason why customers may not be served in the same way under our License Act in any part of the premises the landlord fits up and uses for the reception and convenience of his customers and guests.

A shop license gives leave to a licensee to sell by retail in shops, stores, or places other than inns, ale, or beer-houses, or other houses of public entertainment, in prescribed quantities, all kinds of liquors which are to be wholly removed and taken away from the premises. I suppose he may sell in his shop or from his cellar or out-house, and the leave to sell is common to the inn-keeper licensee, and the shop-keeper licensee alike (except as to quantities), but the places for drinking of the articles sold (which is to be the act of the purchaser in both cases) is diverse and not common.

I have met with the report of an English case recently, which I am not able to lay my hand upon at present, wherein a person licensed to sell liquors in fixed quantities to be drunk *off the premises*—hired a room at no great distance from his place of business, and there his customers resorted to drink and smoke together;—on complaint, he was convicted of a breach of the License Law, for an evasion of duty or excise payable upon licenses by retail, and the conviction was upheld; for the premises where the liquor was consumed, were held to be within the same curtilage.

The place where the liquor was sold by this appellant was within the same enclosure or curtilage as the dwelling-house or hostelry; (see cases cited *post*); and which for purposes of public convenience and the comfort of his other guests, are so far removed from the house as to prevent its being made a nuisance to them, and still might be regarded as belonging to the hostelry. I think, therefore, it had a