

By sec. 2 (e) of the Act in question, "‘Licensee’ shall mean a person holding a license under this Act, and ‘Vendor’ shall have the same meaning." Two kinds of licenses are mentioned in the Act: first, a license for the sale of liquor, the issue of which is governed by secs. 3 to 6 of the Act; second, a license of a "standard hotel," the issue and character of which are governed by sec. 146 of the Act. The first is a license of a person, the second a license in rem of certain premises, but not of the keeper personally. The only statutory authority is an authority to license the premises; and, even if there is authority to license the keeper, there was here no evidence of a personal license to the defendant.

It was not suggested that the defendant was the holder of the first kind of license; and, as the keeper of a standard hotel, he was not a licensee within the meaning of sec. 61. He might be the employee or the lessee of the person to whom the license issued. Considering the definition of "licensee" above quoted, whereby "licensee" is made the equivalent of "vendor," "Licensee" in sec. 61 is confined to a person holding a license as a vendor of liquor. A perusal of secs. 3, 5, 7, 13, 33, 61, 81, 92, 115, and 146, confirmed the view expressed.

There was no evidence that the offence complained of was committed on or with respect to licensed premises. The liquor, the having of which was complained of, was stored in a barn unconnected with the hotel, and distant more than a quarter of a mile therefrom.

Even if the defendant, as the keeper of a standard hotel, was a licensee within the meaning of the Act, the offence here complained of was not committed by him in that quality or capacity, but rather in his quality or capacity as a private individual.

Therefore, the Justice who made the conviction sitting alone exceeded his jurisdiction, and the conviction must be quashed.

No costs. Usual order for protection of the magistrate.

MIDDLETON, J.

FEBRUARY 22ND, 1917.

RE FIERHELLER.

*Will—Construction—Devise to three Daughters—Executory Devise upon Death of one without Issue—Absolute Estates of Survivors—Costs of Motion for Construction.*

Motion by the executors of one Fierheller, deceased, for an order declaring the true construction of his will in respect of certain questions arising as to the distribution of his estate.