

THE LIQUOR LICENSE ACT, 1883.

the Eastern Judicial District of Manitoba. Mr. Ardagh commenced his professional career as a partner in the firm of which the late Hon. John Crawford, afterwards Lieut.-Governor of Ontario, and the present Chief Justice Hagarty, were partners. He was for many years connected with the editorial management of this journal in conjunction with the late Chief Justice Harrison (then at the Bar), and others. We claim to know whereof we speak when we say that the Government has been fortunate in being able to secure the service of one so competent as Mr. Ardagh for the position of County Judge for the judicial district which contains the City of Winnipeg. A sound lawyer of large experience of men and things, a most conscientious, painstaking, and industrious man, of the highest personal character, one who the longer he is known the more he is valued, he will not fail to give satisfaction to all whose opinion is worth having, in his new sphere of duty. We notice that his appointment is favourably spoken of in the Winnipeg papers, where they look forward to his relieving the Superior Court Judges to a considerable extent from the undue pressure of work which has fallen upon them.

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So much has been said lately in the daily papers in respect to the alleged "sad mistake" of the person who drew the Dominion Licensing Act, that it will not be going beyond our province as a legal journal to consider wherein the supposed mistake is said to appear, and to discuss the question in the light of the ordinary rules for the interpretation of statutes. The Municipal Act, (R. S. O. c. 174, s. 74), as amended by the 42 Vict. c. 31, s. 2, Ont., enacts that, "No person who is a license commissioner, or inspector of licenses, or police magistrate, shall be qualified to be a member of the council of

any municipal corporation;" on the other hand the Liquor License Act of 1883, or the McCarthy Act, as it has come to be called, provides (sect. 5) that, "There shall be a Board of License Commissioners, to be called 'the Board,' composed of three persons for each license district—the second commissioner shall be the warden of the county or mayor of the city. When there is both a warden and a mayor having jurisdiction within the license district, the former shall be second commissioner."

Behold, exclaim the objectors, a very palpable blunder. The "second commissioner" is like Kingsley's amphibious animal, which can't live on the land and dies in the water. Under the Ontario Act he can't exist in the municipal council, if he is a license commissioner, while under the Dominion Act he only exists by virtue of being the warden of the county or mayor of the city. We confess that there is a certain plausibility in all this. Let us see, however, whether the position is sustainable from a legal point of view, which is the one by which it must eventually be judged.

Now, no doubt, a statute may be said in a sense to "always speak." The operation of statutes is often extended to matters of subsequent creation: (Wilberforce on Statute Law, p. 166). But there are some modifying rules of statutory interpretation which have to be considered if we wish to discuss these two enactments in a judicial spirit, and from a judicial point of view.

Beyond question, if the objection be rightly taken, a blunder, if not a mischievous absurdity, has been perpetrated by the draftsman of the Dominion License Act. But it is laid down in the books that whenever the language of an enactment admits of two constructions, according to one of which it would be unjust, absurd, or mischievous, and according to the other, reasonable and wholesome, it is obvious that the latter must be adopted as that which the legislature intended: (Maxwell on Statutes, p. 179-180; Hard-