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beyond it lay unknown and inaccessible. For great and inspiring as was his vision of a Gentile Church and of a Christian Empire, it gives place as the New Testament closes to the greater and even more inspiring vision of St. John—of a Catholic Church of every nation, kingdom, and tongue. St. Paul's vision must have seemed further from realization to his contemporaries than St. John's ought to seem to our generation and to our Empire, whose social and commercial, intellectual and spiritual influence extends far beyond her political boundaries.

We need, above all, a compelling sense of our individual responsibility and obligation laid anew on every member of our Church, and we may well pray for and labour towards such a result from the Pan-Anglican Congress of 1908.



The Licensing Bill.

BY SIR THOMAS P. WHITTAKER, M.P.

I HAVE been asked to reply to Canon Ford's article on the Licensing Bill in last month's issue of this Review. I do so with pleasure because it is a reasonable statement of the views of a much-respected critic. I must be brief, and therefore I will at once join issue on one or two points.

In reply to the argument that licence-holders have no right to require that an additional number of licences shall not be granted, and that the State has the right to establish free trade in drink, and that if it did the monopoly value of existing licences would disappear, the Canon says—(1) That investors are justified in "reckoning" that the Legislature will not do anything so foolish, and (2) that free trade in drink would so enormously increase the output of beer that brewery shareholders would make as much profit as ever.

Upon this I would remark that there is all the difference in the world between a "right" and an "expectation." A man may "reckon" that this, that, or the other will occur, but that

will not justify a claim for compensation if it does not happen. Men "expect" a horse to win a race, and bet on it, but the majority of them speedily learn that there is a great difference between expectation and realization. If money be expended on the strength of an "expectation" it is a speculation, a venture—possibly a perfectly legitimate one—but if the expectation be not realized there can be no ground for talk about compensation. If a man expends money in the belief that the State, or the municipality, or another individual will not do something which he thinks would be extremely foolish, he must not talk of vested interests and compensation if what he did not expect be done.

But, as a matter of fact, it is not necessary that there should be free trade of the kind indicated by Canon Ford in order to destroy the monopoly value of licences. There has never been any agreement or understanding with licence-holders that they should always have their licences on the same terms as at present. In fact, the terms and conditions have been changed frequently. It would be quite feasible and legitimate for Parliament to decide that in future the charge for a licence should be considerably higher than it is at present, and that anyone of good character could have a licence for suitable premises on paying the stipulated annual charge for it. It would be easy so to adjust the charge that the number of licences would not exceed, or would even be considerably less than the present number. Such an arrangement would immediately destroy the present monopoly and the value which it gives to licences. It would be no departure from sanity, nor would it enormously increase the output of beer.

Canon Ford, however, says that there is a great difference between extinguishing the monopoly value of a licence by letting every one have one who will comply with the conditions, and appropriating that value to the State. I have shown how there could be something like a combination of the two processes. But, apart from that, surely the right to extinguish the monopoly value involves the right to appropriate it. If the monopoly value be the property of some one who has a right to its

continuance, where is the difference, as a matter of justice and of practical effect, between "extinguishing" it and "appropriating" it? A man might "extinguish" one horse by killing it, and he might "appropriate" another by stealing it. Would not the practical result to the owner be the same in both cases?

After all, the real issue is, Do the licences belong to the nation or do they not? If they belong to the nation, it can from time to time determine whether it will regrant them at all or not, and on what terms and conditions it will issue them if it decides that they shall continue. Canon Ford challenges and impugns the statement :

"That every licence is granted for one year only, that there is no legal right to renewal in the case of any, and that there is consequently no vested interest or property in a licence, but at best only an expectation of renewal."

He declares that, as a matter of law and fact, this is not true. In order to establish his contention, he attempts to read into the law conditions and limitations which, I submit, have no existence, and for which there is no warrant. He says that the justices cannot refuse renewal if the premises are suitable and the licences are not in excess of the legitimate needs of the district. But this is not so. Apart from the fact that unsatisfactory conduct on the part of the licence-holder is not at all an unusual reason for the refusal of a licence, justices are entitled to refuse the renewal of any public-house licence on precisely the same grounds as they would refuse to grant a new licence. Indeed, strictly, each renewal is the grant of a new licence. Lord Halsbury, during the hearing of the Dover case in the House of Lords in 1897, said :

"You draw a distinction between the original granting of the licence and the renewal of the licence. One must clear one's mind and see what it is. It is a new licence for the new year. It is important to observe the accuracy of language. It is not a renewal of the licence, *it is another licence for another year.*"

The justices have to consider the public interest and well-being, and if they are of opinion that it is not desirable on any sound ground of public policy that a particular licence should continue,

it is not only within their power, but it is their duty, to refuse its renewal. There are no conditions under which "they are legally bound to renew the licence," other than some omission to comply with such formalities as giving notice of objection. Mr. Thomas Nash, the legal adviser of the Licensed Victuallers Association, put the position quite accurately in his celebrated letter to the *Morning Advertiser* on September 5, 1883, when he said: "Subject to appeal, the licensing magistrates can refuse to renew the licence of any and *every* holder of an on-licence."

As to whether there is or is not a vested interest, the declarations of the judges have been as numerous as they have been emphatic and clear. In 1882, in the *Over-Darwen* case, Mr. Justice Field, afterwards Lord Field, said :

"The Legislature recognizes no vested right at all in any holder of a licence."

In the course of the judgment, he said :

"As to the distinction between new licences and licences granted by way of renewal, every licence is a new licence, although granted to a man who has had one before, for it is only granted for one year. . . . The Legislature meant to vest the absolute discretion in the justices."

Mr. Justice Stephen said :

"It seems to me clear that this Act was intended to give licensing justices an absolute power, and that they can either refuse or confirm these certificates on any ground they like, and whether the application is for a new certificate or made for the twentieth time, and whether the applicant is of unblemished character, as in the present case, or of bad character."

It is not a question of "superfluous" licences only. The statutes say nothing about superfluous licences, and the decisions in the courts have never so limited the power and discretion of the justices. When similar contentions have been raised they have speedily brushed them aside. The following discussion between Mr. Candy, Q.C., the counsel of the liquor trade, and the judges in the Court of Appeal in *Sharp v. Wakefield* is very instructive :

The Master of the Rolls : "Not renewing is not taking away ; it is not giving."

* * * * *

Mr. Candy: "He has expended his money on the strength of an unwritten contract between himself and the State as represented by the local authority, that so long as he conducts himself properly and commits no offence against the tenor of his licence so long will he be allowed to keep a licensed house."

The Master of the Rolls: "Where do you find that unwritten contract? You are assuming the point that you have got to argue."

Lord Justice Fry: "If you have got a contract you can enforce it."

The Master of the Rolls: "It is a blank assumption in the way of argument of the thing which you have got to prove. You say that there is an unwritten contract that the magistrates will renew. That is the very thing you have got to prove."

Mr. Candy: "Perhaps I ought to omit the words 'relying on an unwritten contract with the justices.'"

The Master of the Rolls: "He has nothing to rely on. He has got a licence for one year and nothing more."

Lord Justice Fry: "He cannot create an obligation on the justices from any expectation of his own. He cannot deprive them of any discretion which is vested in them because he chooses to expect something."

Mr. Candy: "Perhaps I ought not to have used such a pompous word as 'contract.' I ought to have said 'bargain.'"

Lord Justice Lopes: "You cannot put it higher than expectation."

Yet Canon Ford says that if the premises are suitable and the licences are not superfluous "the licence-holders have a legal right to a decision renewing their licences. It is not a case of mere expectation"! Even the leading brewers do not assert as much as that. In the letter which Lord Burton, Mr. Samuel Whitbread, and Mr. W. Waters Butler issued on January 27 this year, after referring to decisions to the effect that the case of each house should be considered on its merits,¹ they said:

"That is what we have always relied upon—not the right of renewal.

"We relied upon the expectation of renewal."

An "expectation" is at best but a "probability," and may be only a "possibility." It certainly does not give "a legal right" to what is "expected." It is not a freehold; it is not even a leasehold. It cannot possibly be put higher than something that can quite equitably be liquidated by a time notice.

There seems to run through Canon Ford's article an

¹ It may be noted in this connexion that they carefully omitted to refer to the judgment in the Farnham case.

assumption that at the end of the time limit all licences are to be suppressed. That, of course, is not so. The monopoly value of those which remain is to be charged for them. That is to say, fourteen years' notice is to be given that at the end of that time licences which have hitherto been granted for an altogether inadequate payment are to be charged for at a proper rate. Is that unreasonable or unfair?

A licence-holder is very much in the same position towards the State as the annual tenant of an ordinary shop is towards his landlord. If such a tenant had occupied a shop for many years at an absurdly low rent, and his landlord came to him one day, and said: "Look here, this shop is worth a great deal more than you are paying for it. I cannot let you go on like this; but I recognize that you bought this business when the premises were let at this rent, and you may have made your arrangements on the assumption that the rent would continue the same, although I never said it would. Consequently, I won't raise your rent just now, but I give you *fourteen years' notice* that at the end of that time I shall require the full annual value of the premises to be paid"—if Canon Ford were that tenant would he talk of "vested interests," "legal rights," "expectation which had become certainty," make a demand for compensation, and raise a cry of "robbery and spoliation"? Would he not be far more likely to say to such a landlord: "You are the most considerate and generous man I have ever met with, and I thank you most warmly for your great kindness"?

I have neither time nor space to follow Canon Ford in what he says about the necessity for the time limit, beyond observing that the fixing of a date when the nation will exercise its undoubted right to dispose of its own licences precisely as it deems best is absolutely essential, not for the revenue that will result from obtaining the monopoly value at the end of it—that is a very minor consideration—but because it will be impossible to effectively restrict and control the liquor-trade until we get it. It is the key to the whole position.