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# “PROHIBITION” IN CLUTHA LICENSING DISTRICT

(REPORT BY MR. R. S. HAWKINS, S.M., BALCLUTHA, WITH REFERENCE TO THE OPERATION OF).

*Laid upon the Table of the House of Representatives by Leave.*

The Hon. the MINISTER OF JUSTICE, Wellington.

SIR,—  
Magistrate's Office, Balclutha, 8th December, 1897.  
It having been my duty to administer in my capacity of Stipendiary Magistrate the penal provisions of “The Licensing Act, 1881,” for the last four years within my circuit, and having therefore a singular experience in this capacity of the operations of what may be termed “the prohibition provisions” of the Alcoholic Liquors Sale Control Act within the Electoral District of Clutha, I think it right to lay before the Government the judgment which I have formed as the result of that experience. Before doing so I desire to offer certain considerations which I think are necessary to explain the attitude of the population towards prohibition.

It is hardly to be questioned that the Alcoholic Liquors Sale Control Acts were the direct issue of a persistent pressure upon Parliament by an organization of very active and zealous persons who considered that persuasion had totally failed to persuade the people to abandon the abuse of alcoholic drink, and that the Executive had totally failed to regulate the sale and prevent the acknowledged abuses of the trade.

This organization persuaded Parliament to put it in the power of any constituency to have recourse to the violent means of shutting up all publichouses, and of totally prohibiting all sale of alcoholic liquors within any electoral district where they obtain a certain majority in favour of that course.

I do not think that there can be any doubt that Parliament, in consenting to pass legislation of so drastic a nature in relation to an article of common consumption, was influenced by the belief that it would be accepted and its prohibitive provisions acted upon in a not inconsiderable number of and in not unimportant electoral districts and centres of population.

It seems incredible that if Parliament had been able to foresee that in 1897 there would be only one remote electoral district, with widely separated small townships, in a scattered agricultural and pastoral population, in which those provisions were to be in force, it would ever have been induced to pass the law.

Yet, this is the fact: twice, at an interval of three years, the question of the adoption or non-adoption of these prohibitive provisions has been referred to the whole constituencies of the colony on a special ballot, the issues being defined in the clearest manner, and twice have the entire constituencies of the colony (with the single exception of the Clutha District) refused to adopt. And in the Clutha District there has only been a vote to close the publichouses: the “No-license” vote has never been carried.

I think it important to put these facts prominently forward, because they do unquestionably influence the wide public feeling of antagonism to the law which exists here.

There is a sense of injustice and of irritation arising out of the fact that what is lawful and expedient elsewhere throughout the entire colony should be declared unlawful and inexpedient in this district. The fact that a majority of the people may have desired, and may still desire, the application of the law does not appeal to the common-sense of the minority as a justification for the restraint.

They feel that they are the victims of an arbitrary law and of an arbitrary territorial boundary; and I think this latter point has caused and explains the especial ill-feeling against the law which exists in the Tapanui district, where, at the last poll, a considerable majority was cast for the issue of licenses, a majority which was destroyed by votes cast in the Waiwera district, at the opposite end of the constituency, and with which the Tapanui settlers have no interest in common, and but little intercommunication.

There always remains the fact that the consumption of alcoholic liquors is not, and, until public opinion is totally changed, cannot be regarded as, *malum in se*.

That it is neither morally bad nor inexpedient the population of this district must be satisfied, since they find that both Houses of Parliament regularly pass a sessional resolution approving the sale and consumption of alcoholic liquors within the walls of the Parliament House itself.

With these general considerations I pass to the actual results of the application of the provisions to this constituency so far as they have come under my notice as Magistrate.

I append to this report schedules giving the particulars of every information laid since prohibition was carried, and what was done on those informations.

The general result is as follows:—

*Informations.*

Withdrawn	...	...	...	...	...	...	40
Dismissed	...	...	...	...	...	...	16
Convictions	...	...	...	...	...	...	23
Total ...	...	...	...	...	...	...	79
Total amount of fines levied ...	...	...	...	...	...	...	£651

It cannot be said that the law has been allowed to sleep by the Executive, or that it has not been fairly put in operation. It will be observed that the first information was laid in November, 1894; the last cases were heard in December, 1897.

Looking back on these prosecutions, and considering the position to-day, it is impossible for me to say that the sale has been stopped, or that any final blow has been given to the trade. My impression is that the effects of convictions are only temporary, and are effaced within a not very long period of time. They bring about greater caution for a time, until the impression wears off.

I am quite unable to say to what extent the consumption of alcoholic liquors in the private houses of the settlers has taken the place of the publichouse consumption.

I am sure that at first, after the closing of the licensed houses, the quantity of alcoholic liquor going in demijohns and casks into private houses was very considerable. But I have been informed that it has since decreased, owing to the settlers finding that it was too costly, the demijohn and cask being soon exhausted when access was constantly to be had to it.

On the other hand, I am informed from credible sources that liquor is to be found generally, and is offered to visitors, in houses where before 1893 no liquor was kept.

I put forward these statements with extreme diffidence. I have no "evidence" which I could bring forward myself.

In all statements made to me I have to consider whether my informant is a Prohibitionist or a license advocate, and to discount the statements accordingly if he is either the one or the other.

So far as to the effect on liquor consumption, I have now to go to a far more serious aspect of the case. The repressive measures and the penal enforcement of them have led to an open defiance of law, and to a disregard of truth in the Magistrate's Court, the evils of which I cannot sufficiently dwell on and deplore.

There is hardly a case which has come before me in which the defendant has pleaded "Not guilty" in which, in my opinion, there has not been lying in the witness-box. In some cases it is most deliberate. In all, it seems to me that no odium attaches to it in the mind of the ordinary public, and that resort to any practices is deemed justifiable to defeat what is considered an unfair attempt to deprive the public of a right.

The lying is becoming systematical; the points to be protected are getting clearly defined; the difficulties of the prosecution are increasing. In a case not long ago—if reliance is to be placed on the statements made in Court by the prosecution—a deliberate conspiracy existed to get rid of witnesses and defeat the ends of justice, while hardly a case is heard in which the prosecution has not suggested that the witnesses for the prosecution have been tampered with—a suggestion which I cannot deny appears to be well founded. I frequently arrive at a conviction by discrediting a part and crediting other parts of the evidence of witnesses for the prosecution, and totally discrediting witnesses for the defence.

That there is a wide public sympathy with the sellers, and antagonism to the informers and police, is unquestionable; and in a recent case in Tapanui there is little doubt that it was necessary that the informers should be taken under police protection.

It appears to me that the advocates of prohibition care nothing, so long as they can keep the publichouses closed, what injury is done to the respect for law, or to the cause of morality or justice; that their entire morality is summed up in the words "total abstinence," and, given that, *ruat cælum*.

I do not so regard it; and I say that, while attempting (for they only attempt) to cast out one devil, they are bringing in several others far worse than that one.

There are not only the evils I have dwelt upon, but there is dissension and ill-will and mutual distrust, and even hatred, springing up in these little townships, and growing out of this source.

It may be said, "If all this lying in Court is going on, why do I not order a prosecution for perjury?"

There was one committal by me for perjury in a licensing case in which the perjury was absolutely demonstrated beyond all question—perjury based on conclusive documentary evidence—yet the jury acquitted the accused.

It is not the first case of the kind within my experience, and it is a matter of general "*On dit*" that a conviction for perjury cannot be got out of an Otago or Southland jury.

Convictions for perjury are, in my judgment, never likely to be obtained as long as the fault is elevated into the dignity of an indictable offence and subjects the offender to seven years' imprisonment.

When criminal law shall obtain due attention and rational treatment from the Legislature, lying in the witness-box in all matters of summary jurisdiction and that of the Magistrate's Civil Court will be an offence punishable summarily by the Stipendiary Magistrate by fine or alternative imprisonment.

I have placed, to the best of my ability, before you my judgment of the whole position.

It is for the Government to take the responsibility of maintaining or of asking Parliament to abrogate this law; but if Parliament declines to abrogate the law, then I think that the Executive should put on such a force as to render the breach of the law impossible; for I hold that the continuance of the present state of things is unendurable, an evil of a character most mischievous to the morality of the population of the district.

Whatever happens, as long as the law is in force, I shall, in the discharge of my magisterial duty, rigorously enforce it. On that head the Government need entertain no doubt whatever.

I am, &c.,

ROBERT S. HAWKINS,

Stipendiary Magistrate for the Lawrence, Milton, and Clutha Districts.

#### MAGISTRATE'S COURT, BALCLUTHA.—CLUTHA DISTRICT.

##### RETURN of Persons convicted and charged with Breaches of the Licensing Act.

Date.	Name.	Offence.	Date of Conviction.	Magistrate.	Decision.	Amount of Fine.
						£ s. d.
28/2/95	Charles F. Dunnett ..	Sly-grog selling	8/3/95	R. S. Hawkins, Esq.	Convicted, and fined £10; costs, 9s.	10 9 0
"	Thomas J. Collins ..	"	"	"	Withdrawn.	
"	"	"	"	"	Convicted, and fined £10; costs, 9s.	10 9 0
"	William Simmonds ..	"	"	"	Withdrawn.	
"	"	"	"	"	Convicted, and fined £10; costs, 11s.	10 11 0
"	Patrick McCann ..	"	"	"	Withdrawn.	
14/11/95	Augustus Munyard ..	"	20/3/95	"	Convicted, and fined £10; costs, 9s.	10 9 0
"	"	"	"	"	Fined £15 and costs; confiscation ordered by R. S. Hawkins, Esq.	15 0 0
"	"	"	"	"	Withdrawn with consent of Bench.	
"	Elizabeth M. Marshall	"	"	"	Fined £15 and costs; confiscation ordered by R. S. Hawkins, Esq.	15 0 0
"	"	"	"	"	Withdrawn.	
"	Patrick McCann ..	"	"	"	Fined £50; confiscation ordered	50 0 0
"	"	"	"	"	Withdrawn.	
"	Mary Collins ..	"	"	"	"	
"	Thomas J. Collins ..	"	"	"	Fined £35 .. .. .	35 0 0
"	Sarah Officer ..	"	"	"	Fined £15; confiscation ordered	15 0 0
"	"	"	"	"	Withdrawn.	
"	"	"	"	"	"	
"	John Sector ..	"	"	"	Withdrawn.	
"	"	"	"	"	Fined £35 .. .. .	35 0 0
"	Charles F. Dunnett ..	"	"	"	Withdrawn.	
"	"	"	"	"	"	
18/11/95	Mary Dunnett ..	"	"	"	"	
5/8/96	Thomas J. Collins ..	"	"	"	"	
"	Patrick McCann ..	"	18/8/96	"	Dismissed without prejudice, information to be laid again.	
"	"	"	"	"	Withdrawn.	
"	Augustus Munyard ..	"	"	"	Dismissed without prejudice, information to be laid again.	
"	"	"	"	"	Withdrawn.	
16/7/97	Thomas J. Collins ..	"	"	"	Dismissed.	
"	Patrick McCann ..	"	26/11/97	"	"	
"	Eliza McCann ..	"	"	"	Fined £20, and costs 17s.	20 17 0
"	Charles F. Dunnett ..	"	"	"	Dismissed.	
"	Mary Dunnett ..	"	"	"	"	
"	Augustus Munyard ..	"	"	"	"	

## RETURN of Persons charged with Breach of Licensing Acts since 1893, with Result of Charges.

Date of Offence.	Name of Person charged.	Offence.	Date of Hearing.	Decision.	Amount of Fine.	Liquor confiscated.
5/10/94	Jessie Moir ..	Selling liquor without a license	19/10/94	Withdrawn.	£ s. d.	
"	William Moir ..	Ditto ..	"	"		
10/2/95	James Smith Vial ..	" ..	13/3/95	Guilty ..	10 0 0	
"	Margaret Vial ..	" ..	"	Withdrawn.		
"	Adam Paterson ..	" ..	"	Guilty ..	10 0 0	Liquor confiscated.
"	Annie Paterson ..	" ..	"	Withdrawn.		
15/2/95	William Moir ..	" ..	"	Guilty ..	10 0 0	Liquor confiscated.
"	Jessie Moir ..	" ..	"	Withdrawn.		
13/9/95	William Moir ..	" ..	9/10/95	Guilty ..	50 0 0	
"	Jessie Moir ..	" ..	"	Withdrawn.		
13/11/95	William Moir ..	" ..	11/12/95	Dismissed.		
"	Jessie Moir ..	" ..	"	Withdrawn.		
12/11/95	John Dunne ..	" ..	"	"		
13/11/95	" ..	" ..	"	"		
12/11/95	Margaret Dunne ..	" ..	"	Dismissed.		
13/11/95	" ..	" ..	"	"		
24/4/96	William Moir ..	" ..	13/5/96	Guilty ..	80 0 0	
"	Jessie Moir ..	" ..	"	Withdrawn.		
27/7/96	John Anderson ..	" ..	15/8/96	Guilty ..	50 0 0	
"	Mary Anderson ..	" ..	"	Withdrawn.		
24/7/96	William Moir ..	" ..	"	"		
"	Jessie Moir ..	" ..	"	Dismissed.		
17/10/96	William Hay ..	" ..	11/11/96	Guilty ..	40 0 0	Liquor confiscated.
"	John Anderson ..	" ..	9/12/96	Guilty ..	70 0 0	
"	Mary Anderson ..	" ..	"	Withdrawn.		
15/7/97	John McCorley ..	" ..	21/8/97	Dismissed.		
"	" ..	" ..	28/8/97	"		
19/7/97	" ..	" ..	21/8/97	Withdrawn.		
"	" ..	" ..	28/8/97	"		
15/7/97	Margaret McCorley, wife of John McCorley	" ..	21/8/97	"		
"	Margaret McCorley, daughter of John McCorley	" ..	28/8/97	"		
20/7/97	John Dunne ..	" ..	21/8/97	Dismissed.		
22/7/97	John James Dunne ..	" ..	"	No evidence offered ; withdrawn.		
10/9/97	William Hay ..	" ..	9/10/97	Guilty ..	50 0 0	
2/11/97	Margaret Heney ..	" ..	12/11/97	Dismissed.		
"	John Heney ..	" ..	"	Withdrawn.		
4/11/97	Margaret Heney ..	" ..	25/11/97	Dismissed. Notice of appeal by Inspector Pardy.		
"	John Heney ..	Exposing liquor for sale	"	Adjourned to 8/12/97.		
"	Margaret Heney ..	" ..	"	"		
12/11/97	" ..	Selling liquor without a license	"	Withdrawn.		
4/11/97	John Heney ..	Exposing liquor for sale	Adj'ned to 8/12/97	Convicted ..	5 0 0	Liquor confiscated.
"	Margaret Heney ..	" ..	Ditto	Withdrawn.		
12/11/97	John Heney ..	Selling liquor without a license	8/12/97	Convicted ..	40 0 0	
15/11/97	" ..	Ditto ..	"	Withdrawn.		
"	Margaret Heney ..	" ..	"	Convicted ..	5 0 0	
2/11/97	James Duncan ..	" ..	"	Dismissed.		
					£420 0 0	

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