

[HIGH COURT OF AUSTRALIA.]

EDGAR APPELLANT ;

AND

THE LICENSING COURT OF VICTORIA }
AND ANOTHER } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

*Licensing—Renewal of licence—Reduction of number of licences—Licence declared to cease—Compensation not determined until after local option vote taken—Resolution that number of licences continue carried—Jurisdiction of Licensing Court—Licensing Act 1915 (Vict.) (No. 2683), secs. 295, 296, 298, 299 *—Licensing Act 1916 (Vict.) (No. 2855), secs. 46, 51.** H. C. OF A. 1921. MELBOURNE, May 18, 23.

Pursuant to sec. 51 of the *Licensing Act 1916* (Vict.) the Licensing Court had determined to reduce the number of licences in a particular Licensing District, and in carrying out that determination had, before the day appointed for the taking of the first local option vote mentioned in that section, declared

Knox C.J.,
Gavan Duffy
and Rich JJ.

* Sec. 295 of the *Licensing Act 1915* (Vict.) provides that a local option vote shall be taken in every Licensing District on the day fixed for the poll at each general election for the Legislative Assembly; and, as amended by sec. 51 (1) of the *Licensing Act 1916* (Vict.), that the first local option vote should be taken at the second general election after 1st January 1917. Sec. 296 provides that the following resolutions shall be submitted to the vote of the electors: Resolution A, that the number of licences existing in the electoral district continue; resolution B, that the number of licences existing in the electoral district be reduced; and resolution C, that no licences be granted in the electoral district. Sec. 298 provides that "if resolution A is carried the number of licences of the respective descriptions shall not exceed the number at the time of the taking of the vote." Sec. 299 (3) (substituted

by sec. 46 of the *Licensing Act 1916*) provides that "When the Court determines that any licence shall cease such licence shall at the expiration of the period for which it was granted or renewed cease and become absolutely void and shall not be renewed." Sec. 51 (2) of the *Licensing Act 1916* provides that "Until the day appointed for the taking of the first local option vote . . . the Licensing Court for any Licensing District may determine that reductions be made in the number of victuallers' licences for that District as if resolution B . . . had been carried in that District and may determine the amount of compensation payable; and for the purposes of this sub-section the provisions of the *Licensing Acts* with such modifications and substitutions as are necessary shall be read and construed and given effect accordingly."

H. C. OF A.
1921.

~
EDGAR
v.
LICENSING
COURT
(VICT.).
—

that the licence of a certain hotel should cease to be in force at the expiration of the period for which it was then renewed. At the taking of the first local option vote in the District the resolution that the number of licences should continue was carried. After the taking of that vote the amount of compensation payable in respect of the licence of the hotel in question was determined by the Licensing Court.

Held, that the Licensing Court had no power to grant a renewal of the licence for a period subsequent to that for which it was then renewed.

Decision of the Supreme Court of Victoria (*Mann J.*): *R. v. Licensing Court; Ex parte Edgar*, (1921) V.L.R., 89; 43 A.L.T., 15, affirmed.

APPEAL from the Supreme Court of Victoria.

Olive Kathleen Edgar was at all material times the licensee of the Caledonian Hotel in South Melbourne, in the Emerald Hill Licensing District. The Licensing Court, having under the power conferred by sec. 51 (2) of the *Licensing Act* 1916 (Vict.) determined to reduce the number of licences in that District, on 16th August 1920 declared that the licence of the Caledonian Hotel should cease to be in force at the expiration of the period for which it was renewed, namely, on 31st December 1920. Pursuant to secs. 281 and 302 of the *Licensing Act* 1915, on 18th August 1920 the Licensing Court notified the owner of the Hotel and Mrs. Edgar of a sitting of that Court commencing on 6th October to fix the maximum amount of compensation and to determine the amount payable. Mrs. Edgar claimed compensation for the loss of the licence and lease, and was heard on 6th October 1920; and the owner claimed compensation, and was heard on 8th October 1920. On 26th October 1920 the Licensing Court announced its determination of the amount of compensation payable. On 21st October 1920 the first local option vote was taken in the Emerald Hill Licensing District. The result of the vote was that the resolution that the number of licences in the District should continue was carried. On 22nd November 1920 Mrs. Edgar made application to the Licensing Court for a certificate authorizing the renewal of her licence. The Court held that in view of their determination of 16th August 1920 the Court had no jurisdiction to entertain the application, which they struck out. Mrs. Edgar then applied to the Licensing Court to state a case for the opinion of the Supreme Court, but the application was refused.

Mrs. Edgar thereupon applied to the Supreme Court for an order *nisi* calling upon the Licensing Court to show cause why a writ of mandamus should not issue directing the Licensing Court to hear and determine the application for renewal, or, alternatively, why an order should not be made directing that Court to state a case. A copy of the order *nisi* was directed to be served on the Licensing Inspector for the District as well as on the Licensing Court. The order *nisi* came on for hearing before Mann J., who discharged it, holding that, by reason of the declaration of the Licensing Court of 16th August 1920 that the licence should cease to exist on 31st December 1920, the licence was not susceptible of renewal; that that determination was not avoided by reason of the amount of compensation not having been determined before the taking of the poll; and that the effect of the carrying of the resolution that the number of licences in the District should continue was not that the licence of Mrs. Edgar continued to be an existing licence, but was that the number of licences in the District should not exceed the number in existence at the time the local option poll was taken: *R. v. Licensing Court; Ex parte Edgar* (1).

From that decision Mrs. Edgar now appealed to the High Court.

Owen Dixon (with him *Hennessy*), for the appellant. Notwithstanding the declaration that the appellant's licence was to cease to be in force, she was entitled to a renewal. The process of depriving licensed premises of a licence is not completed until the amount of compensation is determined, and under sec. 51 (2) of the *Licensing Act* 1916 the assessment of the amount of compensation as well as the determination to deprive the premises of a licence must be made before the local option vote is taken. The right to compensation is an essential condition to the deprivation of a licence, and the intention of the Legislature as expressed in sec. 51 (2) is that the whole matter of the deprivation must be completed before the local option vote is taken. [Counsel also referred to the *Licensing Act* 1915, secs. 295 (4), 299 (1), 296, 298, 299; *Licensing Act* 1916, sec. 46.]

Lewers, for the respondent the Licensing Court. The taking of the local option vote did not affect this particular licence, and did

H. C. OF A.
1921.
EDGAR
v.
LICENSING
COURT
(VICT.).

(1) (1921) V.L.R., 89; 43 A.L.T., 15.

H. C. OF A.
1921.
EDGAR
v.
LICENSING
COURT
(VICT.).

not prevent the previous declaration that the licence should cease to exist from taking effect (*White v. Licensing Court* (1); *Hey v. Brookes* (2)). There is nothing in the Acts which requires compensation to be assessed at any particular time, and it may be assessed after the taking of the local option vote. In sec. 51 (2) of the *Licensing Act* 1916 the words "until the day appointed for the taking of the first local option vote" do not govern the subsequent words "may determine the amount of compensation," and, even if they did, there is power under sec. 302 of the *Licensing Act* 1915 and sec. 15 of the *Licensing Act* 1916 to assess the compensation afterwards.

Ham, for the respondent the Licensing Inspector.

Owen Dixon, in reply. The powers and rights given by sec. 51 of the *Licensing Act* 1916 are quite independent of any of the other powers and rights given by other parts of the Acts, and, unless there is a deprivation completed by assessment of compensation at the time the local option vote is taken, the licence remains in force and the licensee is entitled to a renewal.

Cur. adv. vult.

May 23.

KNOX C.J. In this case the COURT is of opinion that the conclusion arrived at by *Mann J.* is correct; and we agree with the reasons given by him for arriving at that conclusion. The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant, *Brayshay & Luke Murphy*.

Solicitor for the respondents, *E. J. D. Guinness*, Crown Solicitor for Victoria.

B. L.

(1) (1919) A.C., 927; 26 C.L.R., 257.

(2) 13 C.L.R., 219, at p. 223.