

THE LICENSING OF SHOPS.

By MR. JUSTICE MEREDITH.

[*Read Thursday, 12th May, 1927.*]

The extension and multiplication of licensing provisions is a natural, and perhaps inevitable, outcome of the development and growing complexity of civilization and social organization. This tendency is viewed with feelings of profound suspicion, and sometimes violent hatred, by persons of a certain temperament or outlook—by those, namely, of a predominantly individualistic turn of mind—those who prize individual freedom beyond anything else. With others, however, the idea of the restriction of individual freedom is mainly associated with the idea of schemes for the improvement of social conditions, which, as at present, are regarded by them as intolerably bad, and to those of such a socialistic turn of mind a policy of control has no terrors. With some this socialistic impulse is so strongly developed that they seem almost ready to welcome State control as if it were something good inherently and on its own account. As this is not merely a Statistical but also a Social Inquiry Society, it cannot be beyond the scope of a paper proper to be submitted to the Society to deal to some extent with the general bearings of the problem of restrictions upon and the control of a freedom that is at present practically unfettered, which restriction and control are implied by any proposal as to licensing shops, and also to deal with the theory and experienced effects of licensing provisions so far as may seem instructive with regard to the particular question under consideration.

The conflict between the individualistic and the socialistic tendencies is not altogether irreconcilable. It is possible to form a perfectly intelligible conception of a rational compromise—a golden mean—and the very possibility of social

organization implies the possibility of such a rational compromise. Indeed, the trouble is not so much with the discovery of a mean as with the fact that most individuals are by temperament swayed strongly towards one or the other extreme, and the golden mean makes no appeal save to the cool judgment of reason. But reason can never expect to command the fifty-one per cent. necessary for a bare majority—the most it can hope for is sufficient support to turn the scale.

That a compromise between the warring tendencies is not alone necessary but possible is evident on a moment's reflection. Suppose someone denounces any interference whatever with freedom of contract as an invasion of some sacred right of individual freedom. Now, passing by the point that under existing conditions very little of the applauded freedom in fact really exists, there is the more fundamental point that freedom of contract could have little or no meaning apart from rights of property. But all such rights imply correlative restrictions on the freedom of others. In practically every case which one can imagine the question of control is not a question of whether freedom is to be restricted or unrestricted, but only of the extent of restriction that is advisable. Take, for instance, such a matter as the censorship of cinema films. The subject-matter of this control are things in respect of which there is an exclusive right, called copyright—a monopoly that itself implies a restriction of freedom. The restriction is, therefore, only imposed on what itself exists by virtue of a restriction of freedom. Then, presumably, the proprietors of the cinema theatres only grant admission to those who pay for their tickets. Such persons are licensees and the rest of the world are excluded.

This does not imply any disregard of the great worth of freedom, or any desire to minimize the dangers with which any additional restrictions on individual freedom are fraught. The points which it is sought to emphasise are, first, that the growth and extension of licensing provisions must advance *pari passu* with the extension of the scope of freedom incident to the growth of social organization and the larger possibilities which that growth creates, and, secondly, that certain restrictions of freedom are conditions of the possibility of a well-ordered community, and are restrictions the imposition of which can be justified on the ground that they are in the interest of extended freedom itself. That second point is the one which touches the principle of reconciliation or compromise between the opposing tendencies. Certain

restrictions and a certain control may tend to promote the maximum of individual freedom possible, under such existing conditions as have to be accepted, for the community as a whole. This consideration provides the point of view from which any licensing proposals should first of all be estimated.

It may seem strange that "licences" should come to be regarded primarily from the standpoint of restriction of individual freedom. For in itself a licence is simply a permission to do something which would otherwise be unlawful. In itself, therefore, the licence is only a liberty. But it presupposes something that is unlawful, and as a general rule provisions for licences only arise as concomitants of provisions making something unlawful which would not otherwise be unlawful. A typical instance—apart from statute—is a licence to assign leasehold premises, the licence being quite unnecessary but for a covenant against assignment without the licence of the landlord.

It is, in fact, a peculiarity of licence that, like the Roman god Janus, it always faces in opposite directions. Indeed, as experience shows, it has a wonderful facility for acquiring a nature in practice the very reverse of its nature in theory. Thus a mere licence is by nature revocable, but a variety of incidents, with which it readily associates, may make it irrevocable, and the revocation of a licence in breach of a contract may be restrained by injunction. Modern cases, such as *King v. Allen & Sons, Billposting Ltd.*, 1916, 2 A.C. 54, leave small scope for the application of the time-honoured authority of *Wood v. Leadbitter*, 1845, 13 M. & W. 838. Statutory provisions can, however, without difficulty determine the conditions under which a statutory licence may be withdrawn or cancelled, and it is mainly upon the efficiency and wholesomeness of such provisions for withdrawing licences that the value of a statutory licensing system depends.

There is another respect—and one more significant for our present inquiry—in which the natural and original character of a licence tends, in effect, to become transformed. One of the earliest cases on the subject of licences was one of *Thomas v. Sorrel*, Vaughan, 330, which established the proposition that a licence passes no interest and does not confer any property in a thing. But the first reflection that naturally occurs to any thoughtful person on a suggestion that shops should be licensed is that any system of licensing must create vested interests and what are, to all intents and purposes, proprietary rights. Experience shows that this reasoning is correct. The typical instance of the distinction

between a licence and an assignment of an interest in property is afforded by the difference between a licence and a lease. This distinction has been the subject of a long line of authorities, but what the authorities in effect show is that an exclusive licence granted for valuable consideration may be just as good in every practical respect as a lease, and that the difference may vanish to a mere point of theory. But it is unnecessary to labour this aspect of the question, as experience of licensing legislation in respect of the sale of intoxicating liquor has very clearly shown the extent to which and the manner in which licensing provisions tend to create what are to all intents and purposes proprietary rights.

Again, as a licence, in theory, confers no property in a thing, so, in theory, it is not assignable. But it may be expressed to *extend* to any person or persons, and so it may be made to extend to the assignees of any property in respect of which it is to be enjoyed, or, indeed, to the assignees of merely contractual rights. In this way a licence may be made transferable with as much ease as anything recognised to constitute property. Consequently in practice the fact that a licence is not in itself transferable is unimportant, and the real questions are such questions as whether it is a mere personal licence or not, and, if personal, are special qualifications to be required, and is it to be given to a company with perpetual succession, and whether it is to be annexed to certain premises or not. These are all important questions that would have to be considered if shops were to be licensed.

With these preliminary remarks, which I hope will contribute to an understanding of what is involved in general, I may pass on to the special considerations affecting the question. The first of these, and certainly the one which has affected my mind most, is the abnormally large number of retail businesses that have been closed down during the past three or four years. With time and industry it might be possible to compile informative statistics on this point, but I regret to say that I have not found it possible to procure any useful figures. My attention has been directed to the matter simply by the unusually large number of liquidators that I have had to appoint during the last couple of years. From a legal or judicial point of view applications in this respect are not particularly exciting, and if one were only to look at the matter from this point of view it might be possible to make winding-up orders with as little emotion as an undertaker carries through a burial job, but viewed from a human or economic standpoint one cannot help feeling

deep concern at the passing away of a business that has been carried on with success for perhaps thirty or forty years or more. Now, what is going to happen—or what is going to be allowed to happen—when, as we all hope and expect, in a short time business begins to improve? Are new-comers—foreigners perhaps—to be allowed to step in with fresh capital and replace the businesses that have gone under in adverse times and make a bid for the retail trade of the country? And are they to be allowed to squeeze out some of the remaining concerns that have only just managed to weather the storm? Such a result would have reactions in various directions. The new concerns might have alien interests. Alien control of a sufficient number of the retail premises in the country might seriously affect our economic conditions.

The second main consideration affecting the question is that it is practically impossible to conceive any effective system of control of retail prices that is not based on licensing provisions. Of course it is conceivable that the Food Prices Commission may spring a surprise on us and suggest some adequate method of control independently of any licensing system, but I confess that to my mind the only question appears to be how far control could be made effective with the assistance of the machinery of licences. Apart from such assistance, as the first step, any attempts at control would appear to be inevitably futile. There seems to be no alternative between a system of licensing and a mere policy of *laissez faire*.

It is obvious that these two considerations would each affect the shopkeeper very differently. Suppose that licences could be taken out as of right in respect of all existing shops, then the restrictions necessarily implied by the system would, apart from the question of control and the withdrawal of a licence for breach of regulations, only hit would-be new-comers into the field. The exclusion of fresh competitors could be nothing but a benefit to the existing shopkeepers—a benefit which would at once enhance the value of the goodwill of their businesses, particularly in any growing districts. But the question of control would be viewed in a very different light. As the object of this paper is simply to consider a problem in its general bearings, and not to advocate any particular policy in the interests merely of a particular section of the community, the whole question of submission to control on the one hand in return for the benefit of a certain measure of protection against invasion on the other hand must be considered from the point of

view of the shopkeeper as well as of the consumer, and also of the wholesale dealer and of the manufacturer and producer generally. But here it is necessary to call attention to another class whose interests are certainly, but not at all as obviously, affected. The landlords whose premises are let, or are offered to be let, as business premises have interests that would be vitally affected by any licensing provisions. As the bearing of the question on these other interests in a large measure reciprocally determines the bearing of the question on the interests of shopkeepers it may advisedly be considered first.

It is obvious that so far as licensing provisions would be effective to place any restriction on the opening of new shops they would lessen the competition for any premises usually let for the purpose of retail trade, and this would at once tend to bring down the rent. Further, they would practically ensure a willingness on the part of the landlord to renew expiring leases. For if the landlord insisted on turning out the occupying tenant he would not be sure of getting another tenant who would be able to get a licence to use the premises as a shop. Further, if the licences were not unalterably annexed to particular premises, but could be readily amended so as to enable a licensee to transfer, let us say, from one side of Grafton Street to another, any vacant premises in the immediate neighbourhood of the premises of an occupying tenant threatened with eviction on the expiration of his lease would be procurable, presumably, at a reasonable rent. Instead of there being unlimited competition for a limited supply of premises there would be limited competition for the limited supply. The inevitable result would be a fair rent in the place of the excessive and altogether artificial rent at present demanded in most business centres. It is difficult to conceive any provision that would hit more surely and directly against the evil of excessive rents for business premises and refusals to renew expiring leases than a restriction upon the licensing of shops. To the landlord who desires that the law should be such as to favour his obtaining the highest possible rent for his premises, irrespective of their intrinsic worth, these considerations would be a powerful argument against any system for licensing shops; but to the shopkeeper, who often has to demand excessive prices for his goods so as to pay his exorbitant overhead expenses, the matter would appear in a very different light.

The interests of the wholesale dealer are not so directly and obviously affected; but that the question is one that

does really concern him appears at once from a recent instructive case of *Sorrell v. Smith*, 1925 A.C. 700. The plaintiff was a retail newsagent and was endeavouring to enforce what was called the "distance limit policy," which was the policy supported by the plaintiff's association, and which sought to restrict the number of newspaper shops in a district, or, in other words, to establish a licensing system run and controlled by the association itself. The plaintiff had endeavoured to enforce the policy by withdrawing his custom from a certain firm named Richie Bros., who had supplied him with papers, and transferring it to Watson's. As a counter move the defendants, who were the circulating managers of the principal London daily newspapers and acted as a committee known as the Circulating Manager's Committee, refused to supply Watson's if Watson's supplied the plaintiff. The plaintiff objected to the defendants hitting back in this way and so brought his action, which led to prolonged litigation, with the ultimate result, on final appeal, that the action was dismissed, on the ground that the defendants' action was merely directed to the protection of their trade interests. The defendants, whose interest was the circulation of the newspapers, considered that the more shops that tried to sell papers the better for the papers. The case is interesting because it shows the conflict of interest between the producers and wholesale dealers on the one side and the retail dealers on the other. The case is also interesting because it shows that the result of the law in the matter is, subject to some limitations which in practice do not count for much, to allow a free fight between the different trade interests. For just as the plaintiff lost his action against the defendants, so they would have lost in a similar action against the plaintiff. In other words, the "distance limit policy" would have won if the combination of retail dealers had been sufficiently strong.

In general what is shown by the numerous cases which have been litigated in the Courts between retail dealers and producers and wholesale dealers is that the freedom which it might be supposed would be invaded if a system of licensing shops were adopted is a freedom which does not exist. In numbers of lines the shopkeeper is not free to sell at what price he pleases, and agreements preventing competition have frequently been upheld and enforced by the Courts. Thus in an Irish case of *Cade v. Daly*, 1910 1 I.R. 306, an agreement not to sell below certain prices was held enforceable if reasonably limited. There are many similar cases. In *Dunlop Pneumatic Tyre Co., Ltd., v.*

Selfridge & Co., Ltd., 1913, 29 T. & R. 270, the plaintiff company made an agreement with one named Dew, a middleman, under which Dew was to sell Dunlop tyres. Dew was to get certain discounts, and bound himself never to sell below certain prices, and never to sell to purchasers who would not give a similar undertaking maintaining prices. The agreement was upheld. So, manifestly, the question is not whether freedom is to be preserved or not, but whether control is to be exercised on behalf of the community as a whole, or is to be left with whatever trade interest is strong enough, after a free fight, to wrest it from its rivals.

We have next to consider how the question affects the interests of the consumer. Here at the outset we have to guard against preconceived notions based on crude and abstract theories. It might seem at first sight that any restriction on the number of shops would be a limitation of competition that would tend to maintain high prices or even tend to raise them, and conversely that the increased competition of an increased number of shops must tend to keep them down. But that certainly is not so. As already pointed out in the case of many classes of shops the prices of most articles are fixed. Wherever you see a chemist's shop you are nearly sure to see another within a stone's throw. These two shops are not trying to cut each other out by underselling. In fact, they cannot attempt to do so, because the price of practically everything they have to sell is absolutely controlled. Similarly, you have to pay the same for gramophone records no matter in which of the many shops that sell these goods you choose to buy. The range of competition among tobacconists seems to be practically confined to smoking mixtures made up by themselves—the prices of everything else are fixed. In these cases a restriction on the number of shops certainly could not tend to send up the price of goods unless the number were so restricted that competition became so ineffective that individual shopkeepers were not afraid to charge more than was generally charged elsewhere—that is, more than the control price. But so far as a restriction in the number of shops could have any tendency to affect the control price that tendency would be in the other direction. For with the decrease in the number of shops the retail dealer could afford to accept a smaller margin of profit, owing to the increased turn-over, while overhead charges remained the same, and, if so, the manufacturer would probably think it advisable to let him do so—that is, to lower the control price—so as to maintain the sales. His choice would appear to be between that course and

spending more on advertisement—on the assumption that the increased number of shops tends to increase sales, or, in other words, acts as a sort of advertisement. The popular notion, therefore, as to the effect of competition has no application whatever to those classes of shops which sell goods the prices of which are controlled. The only question is whether or not in such cases a system of licensing could be made the basis of regulations which might to some extent wrest control from the existing combines, or, at least, exercise some check. But before passing from the subject of the control of prices by producers, who fix the prices at which their goods are to be sold, there is just one observation which it is necessary to make, though it seems quite obvious. Where the price is fixed in this way evidence is not requisite to prove that there is what is popularly called profiteering. The whole object of fixing a control price is to prevent the lowering of the price as the result of competition. It may be assumed that those who fix these prices know what they are about, and that they would not have taken the trouble to fix the price unless it was an artificial price. When we find powerful combines controlling prices it does not require other argument or evidence to prove that the prices charged could not be maintained but for the elimination of competition. The only question is as to the extent to which the consumer is being prejudiced. The existence of the control is of itself eloquent of the existence of a war against the consumer, and of a war in which he is defenceless.

In those classes of shops in which the prices of the goods sold are not controlled there is, of course, some scope for competition. Where this competition is altogether free and there is an actual effort to undersell and squeeze out rivals, then a number of failures are inevitable in times of depression, particularly when depression follows a period of boom in trade. But in many cases, either because of a tacit but generally adopted policy of keeping up prices and not attempting to undersell, or for other reasons, the effect of competition on prices is not very significant. The generally excessive prices charged—that is, excessive when estimated by reference to the percentage of gross profit on a given turn-over—is sufficient evidence of this. What for the most part regulates the prices in these cases is the retail dealer's conception of the net annual profit which he can expect to make, subject, of course, to his estimate of what the consumer will be ready to pay. He has to meet overhead expenses and running expenses, and then there is a certain loss from wastage, and his profits do not begin until after

he has provided for these. He then fixes his prices mainly with a regard to what he thinks he can expect, and has a right to expect, to make per annum out of his share of the available custom. He rarely thinks of easily increasing his turnover by attracting custom from others by under-selling. It is a matter of common observation that even in the case of shopkeepers who for a time adopt a policy of under-selling immediately on opening a new shop, so as to attract a share of the available custom, that policy is generally dropped as soon as the share of custom is obtained and a certain good-will established. The result, therefore, as far as the consumer is concerned, of the opening of the new shop is that the profits made out of the consumers have to support an additional shop.

This brings us to what is really the kernel of the whole question, namely, the nature of the profiteering that obviously and demonstrably exists. For the most part this profiteering is not profiteering from the point of the individual retail trader who looks to his net annual profits—that is, to what he makes out of the business per annum. It is a profiteering by the particular retail trade which as a whole and in the aggregate is making too much out of the given consumption. In other words, the consumer is asked to support too large a body of retail traders. The percentage of profit *on a given turn-over* is too great. If that is so, it is quite irrelevant that owing to the excessive number of the traders the turn-over is so small that despite the excess of profit the individual trader is not making a fortune. The way to prove profiteering, from the consumer's point of view, is to show that the profits made on a given turn-over, that is the profits of distribution, are unnecessarily high. If there are two shops cheek by jowl doing a business that could obviously be done by one on the premises of the one, and with only the addition of, say, one half of the staff of the second, then it is obvious that the consumer must be paying for distribution on an uneconomic basis. That there is such an unnecessary multiplication is a matter which anyone with any power of observation can see for himself.

Accordingly, from the consumer's point of view the first consideration that affects the question is that a reduction in the number of shops would *enable* the shopkeepers to reduce prices owing to the prospect of an increased turn-over. Conversely, assuming that shopkeepers are not making on the average excessively large annual profits, it is useless to expect them to reduce prices, which they find they are able to extract from customers, unless their turn-over can be

increased, and the only obvious means of doing this is by reducing the number of competitors. Secondly, apart from such a course a control of prices would be practically impossible. For not alone is the withdrawal or suspension of the licence necessary as a last resort in order to make any regulation as to prices effective, but regulations that would control prices could hardly be expected to lower the prices beyond those at which the shopkeeper can afford to sell, having regard to overhead charges and expenses, and consequently nothing much can be expected from a control of prices unless the shopkeepers are enabled to lower their prices. Unless, therefore, the individual shopkeepers are making excessive annual profits the control of prices could hardly be hoped to effect reductions, except in a few special cases, unless the number of shops were reduced. This, of course, is a tacit admission that even if a system of licensing combined with control of prices were adopted the reduction of prices effected could only be gradual, as it could only take place (so far as a reduction was not brought about by other causes) as the concomitant of a gradual reduction in the number of shops. As far as the effect of competition on the lowering of prices is concerned it is indeed probable that there would be more stimulus to competition under a licensing system than with no restrictions. For it is not the number of competitors in the field that lowers prices by competition, but the basis on which they compete and the activity of the competition between the existing competitors. Further, nothing is to be gained by, let us say, two fairly prosperous traders squeezing out a struggling rival if, when he closes down, another rival can spring up in his place. If, however, on the closing down of premises owing to failure in the business a new competitor would have difficulty in obtaining a licence so long as the two existing traders kept down their prices there would be some incentive to use the pressure of competition. Hence, though it may seem paradoxical, a limitation on the number of competitors may increase the actual intensity of competition.

The consumer, therefore, would be altogether misguided were he to be opposed to the licensing of shops on the ground that any restriction as to the number of competitors must necessarily, or would even probably, lessen competition and, therefore, tend to send up prices. As a matter of fact, the circumstances which afford the best illustration of competition operating according to popular theory and lowering prices are those in which two, or at least a very small number, of large combines engage in a

trade war, either in the hope of capturing the entire market or, failing that, securing an advantageous division of the market by agreement. The lowering of freights as the result of a freight war between large shipping combines is about the most striking illustration that at once occurs to the mind. Similarly in a trade war involving the large oil interests, the Standard Oil Company and the Shell Transport and Royal Dutch concerns, the consumer would, during the duration of the war, reap the full benefits of the competition which in normal times is very restricted in its operation so far as the fixing of prices is concerned. But all these typical illustrations of the striking effect of competition are illustrations of cases of competition other than that between retail dealers. Thus, to take another instance, the prices of motor cars have fallen very considerably in the last couple of years. But that is the result of the competition of rival manufacturing firms. It would be difficult to mention a single department of the retail trade in which prices have been similarly brought down as the result of competition by the number of shops. Of course, as may be correctly pointed out, where manufacturers' prices come down the reason is rarely to be found in competition alone. The cost of production plays a large part. But, even allowing for that, it is quite clear that competition does not operate to the same extent at all in the case of the retail trade as in the case of the manufacturing trade. Further, there does not seem to be any evidence that so far as such competition does exert an influence, that influence depends, in the way of lowering prices, on the existence of a larger number of shops than is necessary for the purpose of economic distribution.

From the shopkeepers' point of view the question naturally appears to be one of balancing the hopes of advantage to be obtained from restrictions as to the granting of licences and the fears inspired by anything that might pave the way to effective control. The benefit on the one side is certainly very real. It would immediately show itself in an increase in the value of the good-will of every existing retail business. It would, as a result, increase credit. But as against all this the shopkeeper would naturally argue that the consumer cannot gain by the system except at his expense. If control did not exert pressure on the shopkeeper one half of the case for a licensing system must fall to the ground. Of course, there is a certain measure of truth in this argument. *Ex nihilo nihil fit*. But the restriction of licences and any control exercised as to prices might be directed mainly to securing to the consumer the benefits,

or the major portion of the benefits, to be derived from preventing uneconomic distribution and guarding against the consumer having to support an unreasonable number of shopkeepers. The persons, therefore, at whose expense the benefits would in the main be obtained would not be the existing shopkeepers, but only prospective new entrants into the field. That would create the minimum of hardship. Further, the retail dealer should remember that he stands midway between the consumer and the producer, and that if control were some check on his freedom of action with regard to the consumer it might also be used to put some limitations on the control which producers exercise over retail dealers. Besides, it is difficult to see how retailers can successfully combine against producers and their combines, trusts and cartels except under a licensing system. This is important in a country whose export trade is mainly in agricultural products, and whose imports are mainly manufactured goods. Our Irish retail trade is largely controlled by foreign producers whose contracts, directed to keeping up prices, are enforced. This control is not confined to maintaining prices. It takes many forms. Thus some foreign firms will not supply particular goods unless the retailer becomes their agent generally and presses all their lines.

So much for the various considerations affecting particular interests. The outstanding point seems to be the special appropriateness of the present time for the introduction of a licensing system. Assuming that all existing shops—that is, all shops with a *bona-fide* established business—would be licensed as a matter of course, a reduction in the existing number could only be gradual, so that the most opportune time for making a start would be after a number of shops had been closed and before an anticipated increase in the number. An inroad on the retail trade, with the danger of its falling into alien hands, would be prevented. That is the paramount consideration that affects the whole community.

The success of a system does not depend entirely, or, to my mind, even mainly, on the adoption of the principle. Success only attends the patient and judicious working out of details. Under modern complex conditions there is probably no scheme that offers advantages which is not also fraught with some real dangers.

The principal danger to be apprehended from a licensing system applied to shops is that in the course of time the existing burden on the consumer of having to support an excessive number of shops would be simply converted into the burden of having to pay for the excessive purchase-

money that, if care were not taken, would be paid for the purchase of existing licensed businesses. If a transfer of the licence could be obtained as a matter of course by any assignee of a business, and if there was no control in respect of the sales, the purchase-price would obviously tend to rise so as to cover the full value of the good-will, inclusive of the portion which was due solely to the restriction on the granting of new licences and the prevention of wastage in distribution. Suppose a stranger were to purchase an existing business and were to pay £3,000 for the good-will, in a case in which he would not pay more than £1,000 if a licensing system did not prevail, and suppose that the additional £2,000 was obtained by loan from the bank, he would naturally regard the interest on that amount as part of his overhead charges and seek to make up most of it out of his customers. In the course of time, when most of the retail traders were in the same position, the average amount of the overhead charges and the percentage of profit required to be made on a given turn-over would, unless the tendency were checked, tend to rise to something about their present level. It is not necessary to labour this point, as we all know the prices at present obtained for premises licensed for the sale of intoxicating liquors.

The best way to get over a difficulty is to face it fairly and squarely. Now, admitting the difficulty in question, it will be observed that it is practically confined to cases of purchases by strangers. Where the head of a family has conducted a business with the assistance of members of the family and dies and the business remains in the family the position remains much as it was before. The business is not made to carry an additional load. The same applies to cases where the business has been turned into a limited liability company. Now, there are a number of collateral advantages in having retail businesses incorporated under the Companies Acts, and it is certain that the proportion of such businesses that would be incorporated would be much greater than at present if licences were granted to companies in the same way as to individuals, and if licences to individuals were only transferred practically as a matter of course in cases where the applicant was a member of the family and succeeded to a substantial beneficial interest in the business. In other cases the course to be adopted could be adapted to circumstances. For instance, suppose that there were already too many shops of the kind in the immediate vicinity the licence might be extinguished on the application of the rival shops on their offering to pay a fair

sum for compensation in respect of the good-will of the business in respect of which a transfer of the licence was refused. If, however, the circumstances, including the interests of consumers, were such as to make a continuance of the business, on the same premises or on similar premises in the immediate vicinity, desirable, a new licence might be granted to any approved applicant on terms as to offer of fair compensation. These are merely suggestions intended to show that the difficulty is not insuperable, provided that instead of being denied it is squarely faced. It should also be remembered that experience in the case of licences in respect of premises used for the sale of intoxicating liquors is apt to be misleading. The provisions affecting licences of that class have been influenced by considerations of policy that do enter into the question of the licensing system that would be most appropriate in other cases. They are to a large extent a compromise between very diverse policies, one being that of those who would advocate total prohibition. But no one is advocating the closing of all shops as a means of preventing profiteering, or on the ground that some persons buy too much and get bankrupt. In the class of shops considered in this paper the question of the extinction or refusal to transfer a licence has always an unprejudiced alternative in the way of the grant of a new licence on reasonable terms and conditions, and that gives something with which to bargain.

I have only to add that the difficulty in respect of the creation of vested interests only affects one aspect of the whole question, namely, the securing to the consumer the major portion of the benefits arising from the promotion of uneconomic distribution. At worst the security of the existing concerns against an inroad on the part of foreign competitors and foreign capital would be attained, as well as the introduction of a system without which any necessary measure of control would almost certainly be ineffective.

It is perhaps hardly necessary to point out that the need for a system of licensing is greater in respect of some classes of shops than of others, and that provisions for licensing might at first be only extended to such classes.