REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL, WHICH, THOUGH NOT ORIGINATING IN SCOTLAND, DEAL WITH QUESTIONS OF INTEREST IN SCOTS LAW.

HOUSE OF LORDS.

Friday, July 4, 1913.

(Before the Lord Chancellor (Haldane), Earl Loreburn, and Lords Atkinson, Shaw, Moulton, and Parker.)

NATIONAL TELEPHONE COMPANY, LIMITED *v.* POSTMASTER-GENERAL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Jurisdiction—Appeal—Railway and Canal Commission—Railway and Canal Traffic Act 1888 (51 *and* 52 *Vict. cap.* 25), *sec.* 17—*Telegraph* (*Arbitration*) *Act* 1909 (9 *Edw. VII, cap.* 20), *secs.* 1 *and* 2.

By the Telegraph (Arbitration) Act 1909, sec. 1, questions arising under any agreement with the Postmaster-General relative to telegraphs or telephones may be referred for settlement to the Railway and Canal Commissioners.

Held that such a reference is to the Commissioners not as arbiters but as a court of record. Consequently there is a right of appeal from the Commission to the Court of Appeal upon questions of law.

Judgment of the Court of Appeal ([1913], 2 K.B. 614) *affirmed.*

Held, further, that the general right of appeal to the House of Lords given by the Appellate Jurisdiction Act 1876, sec. 3, is not taken away by the provisions of the Railway and Canal Traffic Act 1888, sec. 17, sub-sec. 5, that appeal shall only lie to the Court of Appeal.

Their Lordships dismissed this appeal without calling upon the respondent. Their written reasons for the judgment, from which the facts appear, were afterwards delivered as follows:—

LORD CHANCELLOR—[*Read by Earl Loreburn*]—The question before the House may be stated very shortly. The appellants entered into an agreement to sell to the respondent certain assets the value of which was, if necessary, to be determined by arbitration. The agreement provided that any question or matter of difference referred to arbitration was to be referred to the Railway and Canal Commission if that body should be authorised to entertain it. In the event of the Commission not being so authorised the provisions of the Arbitration Act 1889 were to apply.

A difference having arisen under the agreement, the Commission at the request of the parties sat and determined it, and fixed the value of the assets in question. The respondent appealed to the Court of Appeal on certain points included in this decision. Before the appeal was opened the appellants took the objection that the Court of Appeal had no jurisdiction to entertain it. The majority of the Court of Appeal, consisting of the Master of the Rolls and Kennedy, L.J., held that there was jurisdiction. Buckley, L.J., dissented.

The ground of the objection was that the Commission had jurisdiction only by virtue of the agreement and of the Telegraph Arbitration Act 1909, and not under the Regulation of Railways Act 1873, as amended by the Railway and Canal Traffic Act 1888, neither of which Acts by itself applied to the case. The 17th section of the Act of 1888 gives a right of appeal to the Court of Appeal excepting where the questions are of fact or of *locus standi*, but it is said that the Telegraph Arbitration Act enables a reference to the Commission, not as the court of record established under the two general Acts I have referred to, but as a body of arbitrators from whom there is no appeal.

Section 17, sub-section 5, takes away the ordinary right of appeal to this House from decisions of the Court of Appeal in cases of appeal to it from the Commissioners, and the Attorney-General contended that in consequence the appeal now brought in this House was incompetent. I am of opinion that this preliminary objection fails. The real question is whether the judgment of the Court of Appeal was a nullity, and not whether that Court erred in a proceeding competent under section 17 of the Act of 1888. I think that in such a case there is nothing to take away the general right of appeal to the House of Lords conferred by section 3 of the Appellate Jurisdiction Act of 1876.

The substantial question in the case turns on the construction of the Telegraph Arbitration Act of 1909. That Act provides by section 1 that any difference of a kind which includes the present case shall, if

the parties agree to such reference, be referred to the Commission, and the Commission is bound to entertain the question. Section 2 enacts that such a proceeding shall be conducted in the same manner as any other proceeding is conducted by the Commission under the Acts of 1873 and 1888, subject to the proviso that by consent, and if the Commissioners approve, the question may be determined by the two appointed Commissioners instead of the whole body. It is contended by the appellants that in a reference under this Act the Commission is not in the same position as in a reference under the general Acts establishing it, and that as no right of appeal is expressly given, none can be presumed.

If the reference is one on the same footing as a reference under the general Acts—that is, a reference to the Commission as a court of record with a right of appeal expressly provided—this is decisive against the points raised in the argument for the appellants, and I find nothing in the Act of 1909 to cut down the effect of the words at the end of section 1, which appear to me to provide for a reference to the Commission in its usual capacity. When a question is stated to be referred to an established court without more, it in my opinion imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decisions likewise attaches. It is said that if this be so the first part of section 2 was superfluous. I do not think so. The initial words of that section appear to me to have been put there by the draftsman in order to lay a foundation for the proviso under which certain cases may be heard by two Commissioners. The proviso is a sufficient reason for the words being inserted, and there is to my mind no justification for reading them as introduced for the purpose of cutting down the natural meaning of the language of section 1.

Upon these grounds I arrive, after hearing the argument, at the conclusion that the appeal ought to be dismissed.

EARL LOREBURN—I took part in the case, and I also think that the appeal ought to be dismissed.

LORD ATKINSON—[*Read by Lord Parker*]—I concur. The Railway Commissioners were appointed by the Regulation of Railways Act of 1873 (36 and 37 Vict. c. 48). Very extensive jurisdiction was conferred upon them by the statute. By the eighth section they were empowered, on a complaint being made to them, to deal against the will of a railway company with many matters, such as undue preferences alleged to have been given by the company.

Where the provisions of any general or special Act passed before or after the statute of 1873 authorised or required that a difference between a railway company and a canal company should be referred to arbitration, section 8 provided that that difference should, on the application of one party to the dispute, be, with the consent of the Commissioners, referred to them for their decision in lieu of arbitration. The Commissioners were thus bound to deal with a question such as a complaint of undue preference brought before them presumably by a party aggrieved, whether they liked it or not. They had no power to refuse to do so. Under the eighth section they, if they so consented, were bound to decide a difference brought before them at the instance of one of the parties, and it might be against the will of the other.

By the ninth section any difference to which a railway company or a canal company was a party might, on the application of both the parties to the dispute, be referred to the Commissioners for their decision provided they consented to that course. This last is obviously what has been described in argument quite rightly as a purely consensual arbitration.

The Commission had the further power in proceedings under either of these two sections 8 and 9 to state a case, if they should think fit, on any other question which in their opinion was a question of law for the opinion of a superior court. They had no option of the kind here given in proceedings under sections 6, 11, 12, and 13. In these latter instances they were bound to state a case if required. The important point, however, to consider is that this mode of access to a superior court of law was provided under the terms mentioned in each and every of the several classes of proceedings with which the Commissioners had to deal and in which they had to adjudicate.

By the eighth section of the Act of 1888 all the powers vested in or capable of being exercised by the Railway Commissioners under the Act of 1873 are vested in the new Commissioners appointed by the former statute, and I think there can be no doubt that from the passing of that statute the new Commissioners had full jurisdiction to entertain and decide each of the several classes of cases mentioned in sections 6 to 8 and 9 of the Act of 1873; and, moreover, that under section 17 of the Act of 1888 an appeal not dealing with a question of fact or *locus standi* would lie from their decision in each of those classes of cases. But section 9 of the Act of 1873 deals with consensual arbitration and nothing else. In no case could the Commissioners be arbitrators to whom the parties had by consent referred their differences more absolutely than they are under this section, and yet while so acting they are so far treated as a court of law that an appeal lay from them, as of right, to the Court of Appeal. The fact that the Commissioners are selected by the agreement of the parties to decide, and are not bound to act, is not then in my view at all crucial, and does not determine the question whether the matter referred to them is to be dealt with by them in their character of a court of law or purely in their character of arbitrator.

Somewhat similar considerations apply to section 18 of the Act of 1888. It does not seem to be open to doubt that the three Commissioners could commit for contempt of court arising in a proceeding under section 9 of the Act of 1873.

The parties in the present case have

agreed that the matters in difference in this particular controversy shall be referred to arbitration. Sub-section 1 of section 1 of the Telegraph Arbitration Act 1909 therefore applies. Like the ninth section of the Act of 1873, it provides that the parties must agree to refer to the Commissioners, but unlike that section it provides that the Commissioners shall determine the matters referred. If the matter stood there I think it would be clear that this section only added another item to the several matters which the Commissioners have already power as a court of law to determine, just as they determine as a court of law matters arising under section 9 of the Act of 1873. It is not in substance, in my view, at all a question of giving a right of appeal by implication. It is simply the question of extending a jurisdiction of an existing court of law with all its incidents, including a right of appeal to a new matter closely resembling in character those matters over which it has already jurisdiction as a court of law. It is urged, however, that the construction of section 1 here suggested cannot be adopted, inasmuch, as express provision is in section 2 made for the mode in which the proceedings are to be conducted by the Commissioners, and that this would have been unnecessary if section 1 had the meaning suggested. Well, it may be that this provision in section 2 is unnecessary, and was introduced *ex abundanti cautela*. The same remark, however, does not apply to sub-sections 1 and 2 of this section, and I find nothing in these latter inconsistent with the contention that matters referred have been referred to the Commission as a court of law. If they are not a court of law, but purely arbitrators, then the Arbitration Act of 1899 would apply with absurd results. It seems an unsound construction which would place these Commissioners in the anomalous position of persons exercising all the powers of a court of law and yet not being a court of law, and in the position of arbitrators yet untouched by the provisions of the Arbitration Act.

The decision of the Court of Appeal was therefore in my opinion right, and should be upheld, and this appeal be dismissed with costs.

LORD SHAW—I concur. The only point determined by the Court of Appeal and submitted to your Lordships' House was whether that Court correctly determined that an appeal was competently brought before it from a certain judgment of the Railway and Canal Commission. That judgment was pronounced in these circumstances.

By an indenture dated the 8th August 1905 it was agreed that His Majesty's Postmaster-General should buy, and the National Telephone Company should sell, the plant, land, buildings, business, and stores of the latter. It was provided by section 4, sub-section 4, that all matters of difference as to values should be determined by arbitration. And then by section 15 it was stipulated as follows—"That all questions and matters of difference referred to arbitration by or under this agreement shall be referred to the Railway and Canal Commission if that body shall be authorised to entertain the same." It was further provided that in the event of the Commission not being so authorised, "the provisions of the Arbitration Act 1889 shall apply to the determination of such questions."

The event—of the Railway and Canal Commission being authorised to entertain such a reference—took place by the passing of the Act of the 20th October 1909. [Telegraph (Arbitration) Act 1909.] By section 1 of that Act it was provided that any difference such as has arisen "shall, if the parties to such difference have before the passing of this Act agreed or hereafter agree to such reference, be referred to the Railway and Canal Commission, and that Commission shall determine the same."

As to the proceedings before the Railway and Canal Commission on such a reference, there were provisions made that in the discretion of the Commission, and if both parties agree, the two appointed Commissioners shall hear and determine any matter of difference or question. The parties have not so agreed.

The second point of procedure was that the Commission was given a discretion as to costs. No question arises as to that.

Beyond these two small points the provision of section 2 of the Act of 1909 was absolute that all proceedings covered by the statute and referred to the Railway and Canal Commission "shall be conducted by the Commissioners in the same manner as any other proceeding is conducted by them under the Railway and Canal Traffic Acts."

It appears to me that in those circumstances the Railway and Canal Commission was by the combined operations of the agreement and the special Act of Parliament fully and entirely charged with the settlement of differences arising under the indenture between the parties. I think that it was also so to this special extent, that when it became possessed of the cause so referred, that cause fell to be determined according to the rules and methods of the ordinary procedure of the Commission, and it became subject to all the provisions of the Acts 1873 and 1888, including those as to appeal.

By section 5, sub-section 3, of the latter statute it is provided that not less than three Commissioners shall attend at the hearing of any case, and the *ex officio* Commissioner shall preside, and his opinion upon any question which in the opinion of the Commissioners is a question of law shall prevail. I am of opinion that this item of procedure also applies to the case in hand. It does not appear to me doubtful that a question of law having arisen, the provisions of section 17, sub-section 2, of the Statute of 1888 also apply—namely, "save as otherwise provided by this Act" (that is to say, saving questions of fact and *locus standi*), "an appeal shall lie from the Commissioners to a superior Court of Appeal."

In the general case, when a court of record, which the Railway and Canal Commission is by the Act of 1888, sec. 2, becomes

possessed, by force of agreement and statute of a reference to it of differences between parties, the whole of the statutory consequences of procedure before such a court ensue.

The argument is that the Railway and Canal Commission only became possessed of the reference as arbitrators privately agreed to by the parties. It would of course have been open under the indenture for the parties to put such limits upon the powers of their arbitrator—namely, the Commission thus selected—or to settle the points of finality or procedure which they agreed to be specially observed, and it would have been open to Parliament to permit the Commission to act within such limits. But where these things have not been done the court of record must follow its own and its authorised lines. It does not in my opinion matter whether you call the Railway and Canal Commission a statutory commission or an arbitral tribunal. The result is the same. I do not hesitate in adopting the language of Lord M'Laren in *North-Eastern Railway Company* v. *North British Railway Company* (10 R. &. C., Tr. C. 82, 112) when that learned Judge said—"Whether this is arbitration or jurisdictiont here lies, in my view, an appeal under section 17 of this Act of 1888, because it is not said that an appeal shall lie from a legal decision of the Commissioners or that an appeal shall lie under certain conditions, but that 'save as otherwise provided by this Act an appeal shall lie from the Commissioners,' that is, from every act of the Commissioners done under statutory authority save as otherwise provided."

It being thus determined that the judgment of the Court of Appeal in sustaining the competency of an appeal from the Railway Commission to it is a sound judgment, and it being agreed that if this is so the opinion of the Court of Appeal upon the merits will be final, the other point suggested by the learned Attorney-General with reference to the impossibility of an appeal to this House does not arise.

LORD MOULTON—[*Read by Lord Shaw*]—The Railway and Canal Commission is a tribunal originally established by the Regulation of Railways Act 1873, the constitution and powers of which were modified substantially by the Railway and Canal Traffic Act 1888. As at present constituted for England it consists of a Judge of a Superior Court, assigned thereto by the Lord Chancellor, and two Commissioners who are laymen.

The business assigned to the Commission initially related exclusively to matters affecting railway companies or canal companies, but the suitability of a commission consisting partly of legal and partly of lay elements has shown itself so markedly that from time to time the Legislature has assigned to it other matters, in some cases making the consent of all parties a condition-precedent to the jurisdiction of the Commission in the matter, and in other cases enabling the Commission to entertain it on the application of one of the parties.

The present case relates to the valuation of the plant, &c., of the National Telephone Company, Limited, taken over by the Post Office under the provisions of an agreement dated the 2nd February 1905 (modified by a supplemental agreement dated the 8th August 1905) for the purchase of the plant, property, and assets of the company.

By the Statute 9 Edw. VII, cap. 20, sec. 1, it was enacted as follows—[*His Lordship read the section*].

It is common ground that the present dispute comes within this section, and that the parties thereto have agreed to its being referred to the Railway and Canal Commission, and therefore that the above section is operative.

To gain a clear notion of the point which your Lordships are asked to decide, it will be necessary to refer shortly to the course of the litigation. After a protracted hearing the Railway and Canal Commission gave their decision, fixing the amount to be paid by the Postmaster-General. From that decision the Postmaster-General appealed to the Court of Appeal upon certain points of law, and on the appeal coming on for hearing, a preliminary objection was taken on behalf of the National Telephone Company that the Commissioners in hearing and deciding the matter in dispute were acting as arbitrators only and not as a court, and that consequently there was no appeal from their decision. The Court of Appeal, by a majority, decided that they were competent to entertain the appeal, and from that decision the present appeal is brought.

The sole question therefore for decision is whether the Railway and Canal Commission, when acting under the powers of the section quoted above, are acting as a court. To my mind the language of the section leaves no room for doubt on this point. The matter is referred to "The Railway and Canal Commission," *i.e.*, to a well-known court named by its statutory name. In such a case the *prima facie* and natural meaning of the language used is that it is referred to the court as such, and anyone who would maintain that the true meaning is that it is referred to the existing *personnel* of the court as arbitrators merely has to face so strong a presumption in favour of the ordinary meaning of the language that in order to succeed in his contention he must show that other portions of the enactment relating thereto establish beyond all reasonable doubt that his contention is correct.

I will proceed to examine the grounds on which it is suggested that your Lordships ought to hold that it is to the Commissioners sitting as arbitrators and not the court that the statute proposes to refer the matter in dispute.

In the first place, attention was called to the short title of the Act, namely, the Telegraph (Arbitration) Act 1909, and it was urged that this gave countenance to the contention that the reference was merely on arbitration. With regard to this I adhere to the opinion which I expressed in my judgment in the case of *Vacher & Sons* v. *London Society of Compositors* (1913 A.C. 107, 128, 50 S.L.R. 649), namely, that while it is admissible to use the full title of an Act to throw light upon its purport and scope, it is not

legitimate to give any weight in this respect to the short title, which is chosen merely for convenience of reference, and whose object is identification and not description. The full title of the Act under consideration is "An Act to give further powers to the Railway and Canal Commission to determine differences with respect to telegraphs (including telephones)," and if it has any bearing on the question it emphasises the argument that the reference is to the court as such, seeing that it refers to it by its statutory title.

In the second place, it was suggested that the fact that the statute requires the parties to consent to the Commission deciding upon the matter indicated that the proceeding was of the nature of an arbitration. I am wholly unable to understand the meaning or relevancy of this. The consent of the parties is no doubt a condition-precedent, but if that condition-precedent is satisfied its existence can have no effect on the nature or consequences of the reference.

But the main contention on behalf of the appellants was based upon the language of sec. 2 of the Telegraph (Arbitration) Act 1909. Inasmuch as this constituted the bulk of the argument addressed to us on behalf of the appellants I will quote the section in full—[*His Lordship read the section*].

It was contended, in the first place, that if the reference is to the Court as a court, it was unnecessary to say that the proceedings should be conducted by the Commission in the ordinary way. The conclusive answer to this is that the object of the section was to provide that in certain respects the ordinary mode of proceeding would be departed from. There are two obvious methods of drafting a clause providing for this. In the one form you provide that the order of the proceedings shall be the same as usual with the exception of the specific points which are to be altered. In the other form you provide for the procedure on these specific points, and add that in other respects the order of proceeding shall not be altered. Which of the two shall be chosen is a matter of the fancy of the draftsman, and no legitimate conclusions as to the construction of the provision can be drawn from his choice.

Lastly, it was contended that if it had been a reference to the Court as a court it would have been unnecessary to enact that "any order of the Commission on any such difference or question shall be enforceable as any other order of the Commission." I do not trouble myself to decide whether or not the specific provision was necessary or not. It may well be that the draftsman thought that the decisions of the Commissioners on some of the very varied matters which could be referred to them under the powers given by the Act might have peculiarities of nature and effect which might raise a doubt as to whether the award could be treated and enforced in the same way as others made by the Commission in the course of its ordinary work, and that therefore it was better to insert a specific provision to the above effect. But whether that was the reason of his inserting the provision or not, there is nothing in the provision itself which is in the slightest degree inconsistent with the Commission acting as a court, and therefore it fails entirely to rebut the strong *prima facie* presumption to which I have referred above.

For these reasons I am of opinion that the reference was to the Court as such, and that accordingly the general provisions as to appeal from that Court apply to the decision in the present case. It follows, therefore, that this appeal should be dismissed with costs.

LORD PARKER—The question to be determined on this appeal depends entirely on the true construction of section 1 of the Telegraph (Arbitration) Act 1909. That section provides that any difference between the Postmaster-General and any body or person under the Telegraph Acts 1863 to 1908, or any licence or agreement relating to telegraphs (including telephones), shall, if the parties to such differences have before the passing of this Act agreed, or shall thereafter agree, to such reference, be referred to the Railway and Canal Commission, and that that Commission shall determine the same.

The Railway and Canal Commission is a court of record having jurisdiction under the Regulation of Railways Act 1873 and the Railway and Canal Traffic Act 1888. In matters of difference within section 8 of the former Act its jurisdiction can be invoked by any party to the difference. In matters of difference within section 9 of the same Act its jurisdiction can be invoked only with the consent of both parties. Under the 17th section of the Act of 1888 there is in every case a right of appeal from its decision unless such right (as in the case of questions of fact or *locus standi*) is expressly negatived.

When by statute matters are referred to the determination of a court of record with no further provision, the necessary implication is, I think, that the court will determine the matters as a court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same.

The only question is whether section 2 of the Telegraph (Arbitration) Act 1909 contains anything to modify what would be otherwise the effect of section 1. Possibly section 2 contains provisions which, if section 1 has the effect above indicated, might have been omitted. But those provisions may be readily explained as having been inserted *ex abundanti cautelâ*, or as having been introduced with a view to the particular modification in the procedure of the Court which that section undoubtedly contemplates. It does not appear to be consonant with sound principles of construction to cut down the plain meaning and effect of one section of an Act because, if this meaning and effect be given to the section, certain provisions of another section might be otiose. I agree that this appeal fails.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellants—Sir A. Cripps, K.C. — Danckwerts, K.C. — H. H. Gaine. Agent—William E. Hart.

Counsel for the Respondents—Sir R. Isaacs, K.C. (Attorney-General)—Sir J. Simon, K.C. (Solicitor-General)—Buckmaster, K.C.—W. G. S. Schwabe—G. A. H. Branson. Agent—Solicitor to the Post Office.

HOUSE OF LORDS.

Monday, July 7, 1913.

(Before the Lord Chancellor (Haldane), Earl Loreburn, and Lords Atkinson, Shaw, Moulton, and Parker.)

INLAND REVENUE *v.* TRUMAN, HANBURY, BUXTON, & COMPANY.

(On Appeal from the Court of Appeal in England.)

Revenue — Finance (1909-10) *Act* 1910 (10 *Edw. VII, c.* 8), *sec.* 44, *sub-sec.* 2—*Valuation of Licensed Premises — Calculation of Annual Licence Value — Deduction of Profits on Non-intoxicants.*

The Finance (1909-10) Act 1910, sec. 44 (2), directs that the Commissioners of Inland Revenue shall prepare and keep corrected a register showing the annual licence value of all fully licensed premises, and that "in estimating for that purpose the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor" no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration."

Held (1) the words "other premises" include a public-house used substantially for other purposes than the sale of intoxicants; (2) the words "increased value" mean such value as arises from the additional profits made on the sale of non-intoxicants due to their sale on licensed premises, not the value of the whole profits on the sale of non-intoxicants.

Appeal *sustained* on the first point; *dismissed* on the second.

Appeal from a judgment of the Court of Appeal (Cozens-Hardy, M.R. and Farwell, L.J., Kennedy, L.J., *dissenting*) reversing in part a judgment of Hamilton, J., on a petition presented to the High Court under sec. 44, sub-sec. 2, of the Finance (1909-10) Act 1910, which enacts as follows:—"It shall be the duty of the Commissioners to prepare and to keep corrected a register showing the annual licence value of all fully licensed premises and all beer-houses. For the purpose of this provision the annual licence value shall be taken to be the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises, those values being calculated on the same basis as that on which the amount to be paid as compensation under section 2 of the Licensing Act 1904 is calculated in default of agreement and approval in cases where compensation is payable under that Act, but there shall not be included in the value of the premises as licensed premises any amount on account of depreciation of trade fixtures. The annual licence value shall be fixed and certified for the purposes of this Act by the Commissioners of Inland Revenue, and those Commissioners shall send by post a copy of the certificate (and in case any correction is subsequently made in the amount certified, a copy of the corrected certificate) to the licence-holder stating the two annual values by reference to which the annual licence value has been arrived at, and, on the application of any other person who appears to them to be interested in the premises, furnish a copy of the certificate or corrected certificate to him, and any such certificate shall be subject to the like appeal as that to which the determination of the Commissioners of Inland Revenue of the amount to be paid for compensation under sub-section 2 of section 2 of the Licensing Act 1904 is for the time being subject, with the substitution, as respects Scotland, of the Judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Land (Scotland) Acts, and as respects Ireland, of the High Court of Justice of Ireland, for the High Court, and the costs on any such appeal shall be in the discretion of that Court. In estimating for that purpose the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration."

The respondents, Truman, Hanbury, Buxton, & Company, Limited, and Edwin Warden, were the owners and licensee respectively of a fully licensed public-house. Business in the nature of an eating-house was carried on there in addition to the trade in intoxicating liquors. Luncheons were served, and in addition to chops and steaks from the grill, other commodities were sold, such as tobacco and cigars, and mineral waters, and sandwiches and cakes were supplied at the counter. During the year from the 3rd June 1909 to the 2nd June 1910 the takings from the sale of such commodities amounted to £1024, 5s. 2d., and the gross profits on such sale to £359, 16s. 2d. In the period from the 3rd June 1910 to the 31st May 1911 the takings amounted to £1104, 10s. 7d., and the gross profits to £360, 13s. 7d.

The sole question raised in this appeal was the true construction of the last paragraph of section 44, sub-section 2, of the Finance (1909-10) Act 1910.

After the passing of the Finance (1909-10) Act 1910 the appellants proceeded, pursuant to section 44 (2), to fix and certify the annual value of the respondents' public-house as licensed premises at the sum of £1495, the annual value thereof if not licensed, at the sum of £250, and the annual licence value thereof (being the difference