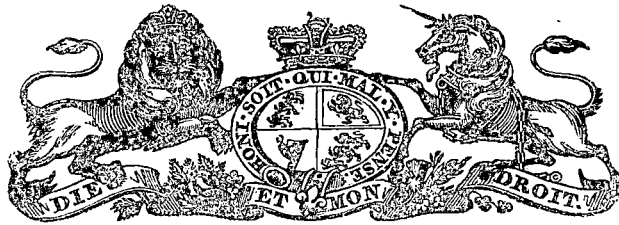


(No. 34.)



1859.

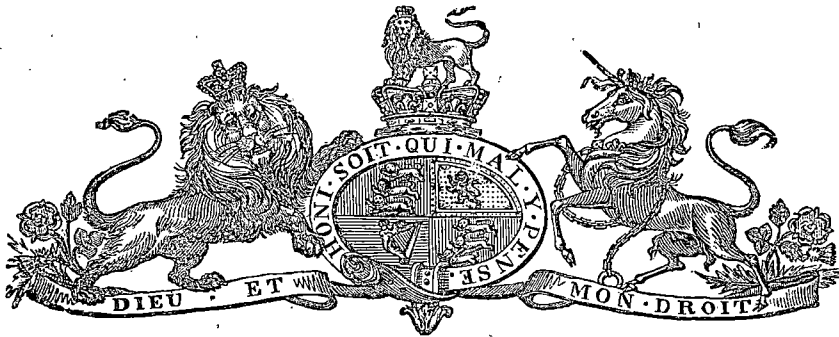
T A S M A N I A.

FELMINGHAM'S LICENCE.

RETURN TO AN ORDER.

(Mr. Meredith, 9 August.)

Presented by Mr. Colonial Treasurer, and ordered by the House to be printed,
24 August, 1859.



Police Office, Triabunna, 4th December, 1858.

SIR,

At the Meeting of Justices held at the Police Office, Triabunna, on the 1st December, for granting Licences in the District of Spring Bay, the following Magistrates were present:—Charles Meredith, Gordon Burgess, John Rudd, and H. S. Vicary. Mr. Charles Meredith being the oldest Magistrate, I proposed him for the office of Chairman, which was carried.

My object in writing to you, is to bring under your notice the reduction made in the Licence Fee, from £50 down to £20, of Mr. Felmingham, Licensed Victualler, residing on the Township of Buckland. Mr. Charles Meredith and Gordon Burgess voted for the reduction, which was carried by the Chairman's casting vote. Mr. Rudd and I protested against such reduction, as being unnecessary and uncalled for. The Township of Buckland is as large as Triabunna, and the country in its neighbourhood equally populous, and the custom is solely enjoyed by Mr. Felmingham,—whereas at Triabunna the custom is divided between two Publicans, Patton and Woodlands.

Notwithstanding the reduction has been carried in Mr. Felmingham's case, I am of opinion that it is illegal. Clause 54 of *The Licensing Act* states clearly that a reduction may be made when a House is *not situate in a Town*. I beg to submit, that Buckland is as much a Town as Triabunna, and the Bench had not the power to reduce Mr. Felmingham's Licence Fee one farthing.

A reduction in Mr. Radford's Licence Fee was carried unanimously, and in his case it was very proper, his House being situated upon a line of road in a thinly populated country, and his House is of more use to the actual Traveller than any other House in the District.

I have the honor to be,
Sir,

Your very obedient Servant,

H. J. VICARY, *Visiting Magistrate.*

The Honorable F. M. INNES, Esquire,
Colonial Treasurer.

REFERRED to the CROWN Solicitor for his opinion as soon as he can conveniently give it.

F. M. INNES,
7th December, 1858.

The Crown Solicitor.

IN the case put by Mr. Vicary there were only four Justices present; two voted for the decrease of Felmingham's Licence Fee, and two against such decrease. Mr. Vicary says the decrease was carried by the casting vote of the Chairman; but he overlooks the fact that the Chairman *has no casting vote*, he is only in the position of any other Justice, and in this case, therefore, the votes must be taken to have been equally divided, and, consequently, *no reduction* of the fee from the ordinary rate has been legally made.

W. L. DOBSON,
9th December, 1858.

The Honourable the Colonial Treasurer.

Colonial Treasury, 10th December, 1858.

SIR,

I HAVE the honor to acknowledge your letter of the 4th instant, in which you represent the circumstances under which the Licence Fee of Mr. Felmingham was reduced to £20 from £50, at the Meeting of Justices held at Triabunna on the 1st inst. ; and in reply I beg to acquaint you that, having referred your letter for the opinion of the Crown Law Officers, I am advised that the reduction is illegal, the Chairman having no casting vote.

I am, &c.

F. M. INNES.

H. J. VICARY, *Esq., Visiting Magistrate,
Triabunna.*

Buckland, Prosser's Plains, 10th January, 1859.

SIR,

I HAVE the honour to request that you will bring the following circumstances under the notice of His Excellency the Governor in Executive Council, with my request that they may be taken into favourable consideration, and that His Excellency in Council may be pleased to cause to be remitted to me £30 of my Licence Fee.

On the 1st December, 1858, I applied for a renewal of my Public-house Licence, in respect of my Licensed House situate at Buckland, Prosser's Plains. I also applied, under the 54th Section of the Licensing Act, to have my Licence Fee reduced. The latter question was put to the vote, when two Justices voted for its reduction to £20, and two Justices voted against such reduction; the Chairman gave a casting vote in my favour, and the fee was ordered to be reduced to £20. The first objection made at the Treasury to receiving such reduced fee of £20, when tendered by my agent, was, that there was a Public-house situate within seven miles of Buckland. I then received a Certificate from the two Magistrates resident at Prosser's Plains (Messrs. Meredith and Cruttenden) that such was not the case. On proceeding to town last week with such certificate, I was met with another and a *new* objection, viz., that the decision of the Bench was illegal, inasmuch as that on an Annual Licensing day the Chairman had a deliberative vote only, *not a casting vote*. Now I would beg to point out respectfully to His Excellency in Council, that, as the Spring Bay Bench told me my application was allowed, it was not *my* duty to discover that they had acted illegally; and that by granting me the reduction of the fee, and by my not being informed *at once* by the Colonial Treasury of *this* objection, I was debarred from the right, I otherwise should have had and exercised, of appealing at the next General Sessions of the Peace held at Spring Bay, as after the last decision given me at the Treasury I had not time to take the necessary steps the law of appeal directs previous to the meeting of such Session. Such being the case, I trust His Excellency the Governor in Executive Council will take my position into consideration, as well as the certificates I have the honour to append, and will cause the £30 to be refunded to me, as in consequence of errors, for which I am not responsible, I have been obliged to pay the full sum of £50 for a Licence in a place where the custom is insufficient from the locality, though, at the same time, a licensed house is not only useful but necessary.

I have the honor to be,
Sir,

Your most obedient Servant,

J. FELMINGHAM.

The Honourable the Colonial Secretary.

I BEG to recommend prayer of Petitioner. For upwards of five years I have known him to keep a respectable, well-conducted house. Buckland is a Township *only in name*, consisting, as it does, of three or four miserable houses. There is not another public-house within fifteen miles of it; and whilst I should consider its custom to be but small, I consider also that an Inn is very much required for the accommodation of travellers and settlers in that locality. At the same time the £50 Fee would appear to be an exorbitant sum for the Publican to pay.

C. FARDLEY-WILMOT, *P.M.*

Buckland Police, 4 Jan. 1859.

WE consider the Fee in question to be most exorbitant, considering the situation of the house.

THOMAS CRUTTENDEN.
JOHN GATEHOUSE.
WILL. OLDING.
JOHN OLDING.
JAMES MATHESON.
JOHN LEDIARD.
FREDK. FENNELL.
WILLIAM SPICER.

For perusal by the Treasurer.

WM. HENTY.

19 January, 1859.

Colonial Treasury, 22nd January, 1859.

SIR,

I BEG to acquaint you that I have laid your letter of 10th inst. before His Excellency the Governor, and I am instructed to say that His Excellency has no power to interfere in the case set forth by you.

I am, &c.,

F. M. INNES.

Mr. J. FELMINGHAM, *Buckland.*

Buckland, 7th February, 1859.

To the Chairman of the Quarterly Meeting held at Triabunna.

I HEREBY give notice that I appeal for a rehearing of my application for a Licence to retail Spirituous Liquors, &c., at my premises situated at Buckland, and known by the sign of the *Buckland Inn*, as at the meeting of the Magistrates on the Bench to-day the votes are equal, and my Licence being refused.

I am, Sir,

Your obedient Servant,

JOHN FELMINGHAM.

Colonial Treasury, 9th March, 1859.

MEMO.

SOME days since the Colonial Treasurer forwarded to Mr. Vicary a letter he had received from him respecting the circumstances under which Mr. Felmingham's Licence was granted, with a Memo. on it from the Attorney-General requiring a fuller statement of the circumstances, and that he awaits his reply, the delay in which is very inconvenient.

H. J. VICARY, *Esq., Triabunna.*

Police Office, Triabunna, 12th March, 1859.

SIR,

I RECEIVED your letter this day, dated the 9th of March, and hasten to answer it.

I make it a rule to reply to all the official letters I receive by the following post, being aware that punctuality is the very soul of business; the letter alluded to I never received,—had I received the letter I should have replied to it immediately. If you will inform me what further information is required respecting Felmingham's Licence, I shall be happy to furnish it. I trust, under any circumstances if possible, that the Government will not sanction a reduction in his Licence Fee, in common fairness to other Licensed Publicans in the District, who have less custom,—it ought not to take place.

I have the honor to be,

Sir,

Your obedient Servant,

H. J. VICARY, *V.M.*

The Hon. F. M. INNES, Esq.

Colonial Treasury, 11th March, 1859.

SIR,

WITH reference to your letter of the 15th ult., respecting the illegality of the proceedings of Justices at a Meeting in issuing a Certificate to Mr. J. Felmingham for a Publican's Licence, I have to acquaint you that, having submitted that communication to the Crown Law Officers, I was advised to obtain further particulars from you on the subject; the issue of the Licence meanwhile to be suspended. Your letter with this opinion, together with a Memo. thereon from myself, I am afraid, by some inadvertence, has not reached you, as it appears no trace in this Office can be found of its having been posted. I therefore forward this explanation in order to obviate any further delay from taking place in obtaining the required information.

I have, &c.

F. M. INNES.

H. J. VICARY, *Esq., Triabunna.*

Police Office, Triabunna, 15th March, 1859.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 11th March, and regret the delay to the Public Service, from whatever cause it may have arisen.

In your letter of the above date, you inform me that you have been advised by the Crown Law Officers to call upon me for further information with respect to proceedings in Felmingham's case. Perhaps the Crown Law Officers will be pleased to state upon what points they require further information: however, in the absence of any specific questions, I respectfully submit to you a few reasons I consider, with my brother Magistrates Messrs. Grueber and Rudd, why Mr. Felmingham should not be granted a Licence at the reduced rate of Twenty Pounds.

Six Magistrates met at the Police Office, Triabunna—Aubin, Meredith, Grueber, Vicary, Rudd, and Burgess—and held a Quarterly Meeting for granting Licences, &c. Mr. Aubin in the chair. Grueber, Vicary, and Rudd voted for the maximum rate; the other Magistrates voted for the reduced rate of Twenty Pounds. Felmingham then handed to the Chairman his Notice of Appeal; and the Chairman adjourned the Court in consequence of that Notice for Seven days. I acquainted the Chief District Constable that the course adopted by the Chairman was illegal: he replied, "I am quite aware of it, Sir." However, it appears the Chairman and his two supporters found out their mistake with respect to the matter of Appeal, and a bright idea entered their brains. They discovered by Clause 10 of the *Licensing Act*, that a Magistrate has the power of adjourning a Court for Seven days; and they shielded themselves under that Clause, and held a Court, and reduced Felmingham's Licence to Twenty Pounds. Now I take it, that when Magistrates are summoned to attend an Annual or Quarterly Meeting, and only one out of the number attend, then he has the power to adjourn the Court for Seven days; but I submit that it was not competent to adjourn the Court in the manner in which it was done by the Chairman. I may add, there was no objection made to a Licence being granted to Felmingham except by Mr. Meredith. Aubin and Burgess voted for a Licence at the reduced rate, but not that he should have no Licence. Now Meredith violently opposed his having a Licence at all, except at the reduced rate. The fact is, the question before the Bench was *the reduction of the Licence fee, not the granting a Licence*; because a Licence was granted to Felmingham at the Annual Licensing day, and he could have had it at any time by paying the Fifty Pounds.

Now, independent of what I have stated, Felmingham's case is not one requiring the discretionary power vested in Magistrates by Clause 54 of the Act. If you will look at a chart of the District, you will find the number of properties occupied by tolerably wealthy people immediately around the Township of Buckland; in comparison with Triabunna they greatly preponderate. Mr. Grueber, who resided for many years at Prosser's Plains, from his knowledge of the place, could not sanction a reduction in the Licence Fee; he considers the publican, whoever he may be, can well afford to pay the maximum rate. I am quite of his opinion, and I should not be doing my duty if I sanctioned a reduction. Moreover Felmingham enjoys the entire custom of that neighbourhood, whereas in Triabunna, a town no larger, two publicans have to divide the custom, and pay Fifty Pounds each for their Licence.

The support to Felmingham is nothing more than a *political* and *popularity-seeking* movement; and I am confirmed in that opinion from having heard the Chairman address Mr. Felmingham from the Bench, "I do not often come here, but I shall *always* be most happy to attend this Office when *you* require me."

I have the honour to be,
Sir,

Your very obedient Servant,

H. J. VICARY, V.M.

The Hon. the Colonial Treasurer.

Colonial Treasury, 22 March, 1859.

SIR,

I HAVE to request you will inform me, (1st.) Whether an application was made by Mr. John Felmingham to the Licensing Bench at Triabunna on the 7th February for a Licence, and whether the question of granting it was disposed of? (2.) Whether an adjourned meeting took place on the 14th February, and how it came to take place,—whether by the Justices assembled on the 7th to hold it, or by the simple act of the Chairman in adjourning from the 7th to the 14th of the month? (3.) What were the proceedings of the Bench at its adjourned Sitting,—did Mr. Felmingham renew his application for a Licence, or was his original application reconsidered? You are requested, at the same time, to forward to me a copy of any notice of appeal which may have been handed by Mr. Felmingham to the Chairman at the Meeting on the 7th, and of the Minutes made by you of the proceedings, respectively, on the 7th and 14th February, at Triabunna.

I have, &c,

F. M. INNES.

Mr. BERNARD SHAW, Swansea.

Swansea Police Office, 26th March, 1859.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 22nd instant, in reference to Mr. Felmingham's application for a Licence at Triabunna.

In reply, I beg to say that I have never attended the Licensing Meetings in the District of Spring Bay, my presence being required at Swansea on the same days.

As Deputy Clerk of the Peace for that District, I published in the *Gazette* the notices of the Meetings, and I summons the Magistrates to attend them; but Mr. Murphy, the Chief District Constable, attends at the Court during its sitting, and acts for me.

Mr. Felmingham did apply to the Licensing Meeting at Triabunna, on the 7th February, for a Public-house Licence, but I cannot say how his application was disposed of.

I am not aware whether or not the Court was adjourned to the 14th February, but no notice whatever of such an adjournment was given to me, and consequently it was not published in the *Gazette*, and the Magistrates were not summoned to attend it.

Mr. Murphy sent to me a notice of appeal given by Mr. Felmingham to the Chairman, but it appeared to me, on reference to the 27th Section of the Act, that it could not be entertained until the next Court of General Sessions of the Peace, to be held on the 11th April. This paper is in the hands of Mr. Murphy, and I would respectfully suggest that perhaps he can afford you the particulars of the proceedings at Triabunna on those days.

I have the honor to be,
Sir,

Your most obedient Servant,

BERNARD SHAW, *Dep. Clerk of the Peace.*

The Honorable the Colonial Treasurer.

Police Office, Triabunna, 26th March, 1859.

SIR,

THE Chief District Constable is about proceeding against Mr. Felmingham for selling without a Licence, for it is time that a stop should be put to such conduct; he has been selling in the most open and impudent manner since his return from Hobart Town. The Chief District Constable would have proceeded against Mr. Felmingham before, but he has not liked to do so on account of the uncertainty existing respecting his Licence. I should be glad to know, at your earliest convenience, whether Felmingham is to have a Licence or not; and I have requested the Chief District Constable not to press the matter until I hear from you. Mr. Felmingham would not dare to act as he is doing only that he is backed and advised by those who ought to act differently. Mr. Meredith is about proceeding against me for issuing a search warrant against him, by which his horse was seized and sold.

I have the honor to be,

Sir,

Your very obedient Servant,

H. J. VICARY, *V.M.*

Honourable F. M. INNES, Esquire.

Colonial Treasury, 29th March, 1859.

SIR,

IN reference to your letter of the 26th instant, I beg to enclose to you copy of a letter addressed to Mr. Shaw, to which he has replied imperfectly in consequence of his not having officiated at the Meeting of the Bench referred to. By this post I transmit a copy of this letter to Mr. Murphy, and I will be glad also to have your answer to such queries contained in it as you are enabled to reply to; and I will then lose no time in answering your communication of the 26th instant.

I have the honor to be,

Sir,

Your very obedient Servant,

F. M. INNES.

H. J. VICARY, *Esq., Triabunna.*

Colonial Treasury, 29th March, 1859.

SIR,

IN answer to a letter, of which I enclose a copy, Mr. Bernard Shaw acquaints me that you are in a position to furnish me with the required information. Will you please do so by return of post?

I am, &c.,

F. M. INNES.

MR. MURPHY, *Chief District Constable,
Spring Bay.*

Police Office, Spring Bay, 30th March, 1859.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 29th instant, and in reply I beg to inform you that an application was made by Mr. Felmingham to the Licensing Bench at Triabunna on the 7th February, six Magistrates present; viz.—Francis Aubin, Chairman, Charles Meredith, Gordon Burgess, Stephen Henry Grueber, Henry James Vicary, John Rudd, Esquires; and the following are the proceedings of the Bench:—

John Felmingham applied for a Licence in respect of a House situate at Buckland, and known by the sign of the *Buckland Inn*; three of the Magistrates voted that Felmingham should have a Licence at £50; viz.—Stephen Henry Grueber, Henry James Vicary, John Rudd, Esquires. Francis Aubin, Charles Meredith, Gordon Burgess, Esquires, would not vote for Felmingham to have a Licence unless at the reduced Fee of £20. Then Felmingham handed a notice of appeal to the Chairman. The Chairman and Mr. Meredith then said, "We will adjourn the Meeting until the 14th February," on which day Mr. Felmingham renewed his application, which was granted under

the 10th Section of *The Licensing Act*. Then Felmingham applied to have his Licence at the reduced Fee of £20, on the grounds that the custom would be small compared with other Houses in the District. Application granted, under the 54th Section of *The Licensing Act*; and the notice of appeal handed in by Felmingham was forwarded to your Office, on the 15th February, by the Visiting Magistrate. However, he got it from me for that purpose.

I have the honor to be,

Sir,

Your obedient Servant,

SIMON MURPHY, *Chief District Constable*.

The Honourable the Colonial Treasurer.

Police Office, Triabunna, 2nd April, 1859.

SIR,

I BEG to inform you that, on the 15th of last February, I forwarded to you Felmingham's application for a Licence, and also the Notice of Appeal handed by Felmingham to the Chairman. The Chief District Constable has not kept copies, otherwise I would now send you duplicates; the originals must be in your Office.

With reference to your letter addressed to Mr. Shaw, I beg to acquaint you, First, an application was made by Mr. John Felmingham to the Licensing Bench at Triabunna, on the 7th February, for a Licence; three Magistrates decided for his having a Licence at the full rate, three against it. Second. Immediately on the above question being settled, Felmingham handed to the Chairman a Notice of Appeal; the Chairman received it, and he and Mr. Meredith adjourned the Court for the Appeal to the 14th February,—although I understand Messrs. Grueber and Rudd have said there was no adjournment at all, for any purpose. This I can soon find out, if necessary,—but the amount of argument was so great, and not of the mildest description either, that it is rather a difficult matter to state exactly all that did take place. Third. I did not attend the Adjourned Meeting, neither did Grueber or Rudd. I did not attend because the adjournment was for hearing appeals, which I knew was illegal, and could not be held until the 11th of April. I am informed by the Chief District Constable that Messrs. Aubin, Meredith, and Burgess attended their Adjourned Meeting on the 14th of February, and granted a Licence to Felmingham at the reduced rate of Twenty Pounds, upon his original application. There was only the original application for a Licence (which I forwarded to you) before the Bench on the 14th of February—not a fresh application.

Now, to prove that a mistake was made by Messrs. Aubin and Meredith, Mr. Shaw informed me that he saw Mr. Meredith at Swansea, about the 9th of February; and when Mr. Shaw communicated to Mr. Meredith that the Court of Appeal for the District could not be held previous to the 11th of April, and that Mr. Vicary was Chairman of that Court, he was much surprised, and it was this communication which caused them to alter their tactics.

I have the honour to be,

Sir,

Your very obedient Servant,

H. J. VICARY, *V.M.*

Hon. F. M. INNES, Esq.

Colonial Treasury, 5th April.

MEMO.

MR. Felmingham is informed that he can obtain his Publican's Licence on transmitting to this Office the reduced fee; namely, £20.

MR. JOHN FELMINGHAM, *Buckland.*

Colonial Treasury, 12th April, 1859.

SIR,

REFERRING to the correspondence which has taken place respecting the Licence granted to Mr. Felmingham, I beg to acquaint you that, after reference to the Law Officers, it has been decided that it shall be issued,—and accordingly Mr. Felmingham has been requested to pay the fee of Twenty Pounds. At the same time I have to point out to you that, when the Chairman at the Meeting on the 7th February intimated an adjournment to the 14th, it was incumbent on the Magistrates who were opposed to that proceeding to have divided upon it.

I would take this opportunity of pointing out through you the great necessity which exists for the Police Clerk, or his substitute, taking an exact or detailed Minute of the proceedings of the Bench on occasions like that in question.

I have the honor to be,

Sir,

Your very obedient Servant,

F. M. INNES.

H. J. VICARY, *Esq.*, *Triabunna*.

Police Office, Triabunna, 16th April, 1859.

SIR,

I AM sorry the Government have found it incumbent upon them to grant Mr. Felmingham a Licence at the reduced rate of £20. I regret it the more, as the adjournment was made by the Chairman clearly upon Felmingham's application to appeal against the decision of the Bench; and from the conversation Mr. Bernard Shaw had with Mr. Charles Meredith at Swansea, two days after the Meeting, that gentleman asserts that the adjournment took place on those grounds.

I do not see how the Police Clerk can attend this office, seeing that on the same day he is required at Swansea. I do not know who is his substitute, unless myself. I take down all evidence in the Record Book when cases are brought before me, and the depositions in cases of felony; but I cannot consent to act as Clerk to a Bench of Magistrates. Had I been appointed Chairman of that Meeting, I should have made minutes of the proceedings; but when Mr. Aubin was appointed, I requested him to take my seat, and he did so, and he was furnished with pens, ink, and paper: if he did not think proper to make minutes of the proceedings, it could scarcely be expected that I would take them down for him.

I have the honor to be,

Sir,

Your very obedient Servant,

H. J. VICARY, *V. M.*

Hon. F. M. INNES, *Esquire*.