[APPELLATE JURISDICTION.]

1890
Nov. 1

READING *v.* THE QUEEN. (No. 1.)

Appeal—Appeals Ordinance 1876, *ss.* 5, 6, 12—*Schedule, Form A—Publicans Ordinance* 1884, *s.* 9.

The grounds of appeal given in a notice of appeal must be fully and clearly stated therein, and any distinct variance in such grounds from those alleged in the petition of appeal will be fatal.

Semble, that such variance cannot form the subject of amendment under s. 12 of the Appeals Ordinance 1876.

This was an appeal from a conviction by the Acting Chief Police Magistrate who had found the appellant, John Reading, guilty of an offence under s. 9 of the Publicans Ordinance 1884 in using licensed premises as a retail store, and had adjudged him to pay a fine of 10*l.* or, in default, to be imprisoned for fourteen days.

Mr. Irvine for the appellant.

The Attorney-General (Mr. Udal) for the Crown.

Before the appeal was opened the Attorney-General took the preliminary objection that the appeal could not be heard because the grounds of appeal contained in the notice of appeal served on the respondent did not conform to those contained in the petition of appeal which had been filed in the Supreme Court, as is provided by s. 6 of the Appeals Ordinance 1876 and by the Form A in the schedule to the Ordinance. He also further contended that the grounds of appeal mentioned in such notice did not disclose the substance of the grounds of appeal as provided by the forms contained in the schedule to the Ordinance, but were too general and gave no intimation as to what were the actual grounds upon which the appeal was based.

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Mr Irvine, in support of the appeal, referred to s. 5 of the Appeals Ordinance 1876 and contended that inasmuch as the notice of appeal under that section, as since amended, must be given within forty-eight hours of the decision complained of and the petition need not be filed until thirty days after, it was practically impossible to comply with the provisions of the Ordinance in this respect; and contended that at all events by virtue of the power vested in the Court under s. 12 the Court could amend any irregularity in this respect and allow the appeal to be heard.

The Attorney-General, in reply, pointed out that all that appellants would have had to do to comply with the Ordinance, if they had served their notice of appeal before filing their petition (as in this case) would have been to have made the grounds of appeal in the latter agree with the grounds in the former, and contended that the power to amend defects given by s. 12 could not apply to cases where a distinct procedure provided by the Ordinance had not been carried out, and at all events that the Court would not see fit to do so in this case.

H. S. BERKELEY, C.J. The proper procedure the Ordinance enjoins must be observed. There has no doubt been a distinct variance between the grounds for appeal in the notice of appeal and those in the petition. The procedure lately and generally adopted has been too lax; there was a tendency to generalise too much. General grounds of appeal gave no real notice to the respondent. The object of the notice is to give information of what the real grounds of appeal are. In future it must be understood that the grounds of appeal must be fully and clearly stated. The procedure enjoined by the Ordinance has not been observed in

this case, and even if I had any discretion under s. 12 to make the required amendments now, I should decline to exercise that discretion. The appeal must therefore be dismissed with costs.

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Appeal dismissed with costs.

[APPELLATE JURISDICTION.]

1891 Jan. 22, 29.

READING *v.* THE QUEEN. (No. 2.)

Appeal—Liquor Prohibition Ordinances II. of 1881, *s.* 3, *and XXIV. of* 1881, *ss.* 2, 3—"*Aboriginal Natives of India.*"

In construing s. 2 of Ordinance XXIV. of 1881 the words "Aboriginal Natives of India" should be taken as synonymous with "Natives of India," and not in their literal and etymological sense implying a descent from the orignal or primitive people of India.

This was an appeal from a decision of the Chief Police Magistrate at Suva for having convicted the appellant John Reading and sentenced him to pay a fine of 50*l.*, or, in default, three months' imprisonment for having supplied one Daulta, a native of India, with liquor contrary to the provisions of Ordinance XXIV. of 1881.

Mr. Garrick for the appellant.

The Attorney-General (Mr. Udal) for the Crown.

The arguments in the case which was heard on 22nd January appear sufficiently from the judgment, which his Honour, after reserving his decision, delivered on the 29th.

H. S. BERKELEY, C.J. This was an appeal from a conviction under the Liquor Prohibition Ordinance XXIV. of 1881. On the appeal two points were relied upon. It was contended, first, that there was no evidence that the man Daulta, to whom it was alleged that the