

*Re J. A. CLARKE.*

[Appellate Jurisdiction (Corrie, C.J.) March 4, 1938.]

*Liquor Ordinance, 1932<sup>1</sup>—application for wholesale liquor licence—no objection—premises reported to be in compliance with provisions of Ordinance—application refused—appeal by case stated.*

The facts of this case were set out in a stated case as follows :—

“(1) This is a case stated by me the undersigned District Commissioner for the district of Lautoka in the Colony of Fiji on an application in writing of the appellant who was dissatisfied with my determination as being erroneous in point of law as herein-after stated.

“(2) At the Court of Summary Jurisdiction sitting at Lautoka for the purpose of hearing applications made under the provisions of the Liquor Ordinance 1932 on the 22nd day of November 1937 and adjourned therefrom to the 20th day of December 1937 an application was made after notice duly given by the appellant J. A. Clark for the grant to him of a certificate for the issue to him of a wholesale licence under the provisions of the Liquor Ordinance 1932 aforesaid in respect of certain premises in the district of Lautoka which application was refused.

“(3) And whereas the applicant being aggrieved and dissatisfied with my said determination as being erroneous in point of law has pursuant to s. 16 of the Appeals Ordinance 1934 and s. 43 of the Liquor Ordinance 1932 duly applied to me to state and sign a case setting forth the facts and the grounds of such determination as aforesaid for the opinion of the Court.

“(4) Now therefore I the said District Commissioner in compliance with the said application do hereby state and sign the following case :

CASE.

“(5) Upon the hearing of the said application—

“(a) No evidence was given by the applicant or any witness.

“(b) The Senior Officer of the Fiji Constabulary of Lautoka reported that the premises in question complied with the provisions of the Liquor Ordinance 1932 and that the Police offered no objection to the issue of the licence.

“(c) No person or persons made objection to the issue of the licence.

“(d) The Senior Officer aforesaid upon being questioned by the Court stated that there were already two wholesale liquor licences as well as a publican's licence in the District. On being further questioned by the Court as to whether he considered another licence necessary to meet the requirements of the district the Senior Officer aforesaid stated that it was a question which he did not think anyone could answer and that he preferred

<sup>1</sup> Rep. *Vide Liquor Ordinance 1946.*

“ not to attempt to do so. He said that a large trade  
 “ was done by the present two wholesale liquor licencees  
 “ and that there was little bottle trade under the  
 “ publican’s licence.

“ (6) The appellant was not represented by Counsel and made  
 “ no contention.

“ (7) My attention was not called to any reported cases.

OPINION.

“ (8) I formed the opinion that the reasonable requirements  
 “ of the district were adequately met by the present two wholesale  
 “ liquor licencees and the publican’s house and that there were no  
 “ grounds to justify the granting of another wholesale liquor licence.

QUESTION.

“ (9) The question upon which the opinion of the said Court  
 “ is desired is whether I the said District Commissioner upon the  
 “ above statement of facts came to a correct determination and  
 “ decision in point of law and if not what should be done in the  
 “ premises.”

[**EDITORIAL NOTE.**—This appeal was uncontested and is reported only as it was referred to in *Indian Trading Co. Ltd. ats. Police* [1946] 3 Fiji L.R.

The Liquor Ordinance, 1932, (Repealed) contained provisions similar to those of the Defence (Liquor) Regulations 1943 (Repealed) as to the proceedings on applications for licencees. The corresponding provisions now in force are in Part II of the Liquor Ordinance 1946. S. 30—(2) of the Ordinance of 1932 was as follows :—

“ In the case of an application for a wholesale licence the  
 “ District Commissioner on being satisfied on a report from the  
 “ senior office of the Fiji Constabulary of the district in which  
 “ the premises are situated that the premises comply with the  
 “ provisions of this Ordinance and that there is no objection to  
 “ the issue of the licence shall grant his certificate for the issue  
 “ of it.”]

APPEAL by case stated against Magistrate’s refusal to issue a liquor licence.

*Gould* for the appellant.

The Attorney-General, *E. E. Jenkins*, for the respondent. I do not contest this appeal. I agree that the licence should have been granted.

CORRIE, C.J.—The appeal is allowed. The District Commissioner is to grant his certificate for the issue of a licence to appellant.