

In exercise of the power conferred by this sub-section, the Governor in Council made an Order dated 5th March, 1931, authorizing all licensing officers to exercise discretion in the issue of any licences under the Licences Ordinance.

Mr. Stuart contends that this Order is invalid because it conflicts with the intention of the Ordinance which is that the Governor in Council shall have power from time to time to authorize one or more Licensing Officers to exercise discretion in the issue of licences but does not permit a general Order of the nature quoted above, embracing as it does all Licensing Officers, present and future, without any consideration of the circumstances affecting each, and he cites the case of *Akerele v. The King* [1934] A.C., 523, in support of his contention.

In that case the Chief Justice of Nigeria, being authorized "by special order" to increase the jurisdiction to be exercised "by a Commissioner", made a general order increasing the jurisdiction of all Commissioners and the Judicial Committee of the Privy Council advised that he had no power to do so because, in the opinion of the Committee, the wording of the section of the Ordinance which conferred the authority upon the Chief Justice made it clear that the special Order was intended to be applicable to an individual and not to a class.

There is, however, a marked difference between the wording of s. 4 (5) of the Licences Ordinance and that used in the Nigerian Ordinance; it is not "a Licensing Officer" but "any Licensing Officer" and "any" may extend to "all" or "every". So while it may be possibly arguable whether the Legislature intended that the subject should be dealt with by what Mr. Stuart has described as an "omnibus" Order, the wording of s. 4 (5) does not put the question beyond doubt as it did in the case of *Akerele v. The King*.

For this reason, I am not prepared to find that the Order of 5th March, 1931, was *ultra vires* of the Governor in Council, and accordingly the rule will be discharged.

---

## SHANTILAL *ats.* LAUTOKA TOWN BOARD.

[Appellate Jurisdiction (Seton, C.J.) August 22, 1946.]

*Jewellery, Old Metal and Marine Stores Ordinance (Cap. 188)—Licence Ordinance (Cap. 154) ss. 3, 7—dealer in jewellery taking out Hawker's Licence in lieu of Store Licence—whether required to take out a Store Licence.*

Shantilal occupied a dwelling house in Lautoka town where he and his employees manufactured jewellery on an enclosed verandah. There was a notice "Licensed Jeweller" or "Shantilal Jeweller" displayed over the front door when the premises were visited by the Town Clerk on 22nd March 1946. At that time Shantilal held a licence issued under the Old Metal and Marine Stores Ordinance in January, 1946 and a hawker's licence but had not held a store licence of any description since December 1945 when his retail store licence expired. In evidence he

admitted that he sold jewellery at his house during 1945 but denied doing so during 1946 ; he stated that during the latter period he was paid for his labour but did not deal in jewellery—that when he went out hawking he got jewellery to repair but did not make and sell new articles. The Magistrate found as a fact that on March 22, 1946 Shantilal did exercise the calling of a licensed dealer.

**HELD.**—(1) The taking out of a licence under the Jewellery, Old Metal and Marine Stores Ordinance *ipso facto* makes the licensee a person exercising the calling of a dealer licensed under that Ordinance.

(2) A person exercising the calling of a dealer licensed under the Jewellery, Old Metal and Marine Stores Ordinance must take out a licence as such under s. 3 of Licence Ordinance unless he has a wholesale and retail licence or a retail licence in respect of the premises recorded in his licence under the Jewellery Old Metal and Marine Stores Ordinance.

[**EDITORIAL NOTE.**—As to point (1) *vide* *Linnett v. Commissioner of Metropolitan Police* [1946] 1 K.B. 290, not referred to in argument.]

**APPEAL AGAINST CONVICTION.** The argument appears from the judgment.

*A. D. Patel*, for the appellant.

*D. J. Warren*, for the respondent.

**SETON, C.J.**—The appellant was convicted by the Acting Chief Magistrate, Northern District, at Lautoka of exercising the calling of a dealer licensed under the Jewellery, Old Metal and Marine Stores Ordinance, 1911 (now Cap. 188 of the Revised Laws), without a licence, contrary to ss. 3 and 7 of the Licences Ordinance (Cap. 154) and sentenced to pay a fine of £2 or in default of payment to undergo imprisonment for a period of 14 days. From this decision, leave to appeal has been sought and granted.

The appellant is a working jeweller and lives in Namoli Avenue, Lautoka, where he carries on his business, but according to him he does not sell, buy or exchange jewellery at his house ; the jewellery he makes he sells in the various settlements outside Lautoka. He said in evidence that he used to sell jewellery at his house up to the end of last year but he had not done so since. Last year he took out a licence under the Licences Ordinance but this year he has only taken out a general hawker's licence since he had ceased to sell jewellery on his premises.

Mr. A. D. Patel, who represented the appellant, said that these proceedings were in the nature of a test case. The question arises apparently as a result of the amendment of the first and second schedules to the Licences Ordinance which was published in the Supplement to the *Fiji Royal Gazette* for the year 1945 at p. 330, whereby the cost of a licence of a dealer licensed under the Jewellery, Old Metal and Marine Stores Ordinance who is established in a town and does not hold a wholesale and retail or a retail licence in respect of the same premises, has been raised from £4 to £40.

Mr. Patel contends that having regard to the nature of the business which has been carried on by the appellant since the beginning of this year he has ceased to follow or exercise his calling at his premises in Lautoka and that in view of the manner in which he now conducts his

business the Licences Ordinance only requires him to take out a general hawker's licence, and he relies on the provisions of s. 17 (1) which are as follows:—

“ 17. (1) A general hawker's licence shall, as regards the kind  
 “ and quantity of articles that may be sold under it, convey the same  
 “ privileges and be subject to the same limitations as a retail store  
 “ licence except that it shall not permit the licensee to sell any goods  
 “ in any store or building occupied either permanently or tem-  
 “ porarily by the licensee but only in a boat or cart or from a pack  
 “ or basket carried by the licensee, and shall not permit the hawk-  
 “ ing of pigeons or other wild birds . . . ”

The Jewellery, Old Metal and Marine Stores Ordinance requires every person dealing in or purchasing for the purpose of making up or manufacturing for re-sale, jewellery, old metal or marine stores to take out a licence under the Ordinance for which a fee of 10s. is charged. S. 4 (4) provides that the licence shall be in addition to and not in lieu of a licence under the Licences Ordinance. S. 5 requires that over one of the principal entrances to the premises licensed there shall be placed a board on which shall be printed in full the name of the licensee and the words “ licensed dealer in ” old metal, jewellery or marine stores as the case may be. The first schedule exhibits the form of licence to be issued in which the place in which the licensee is permitted to carry on his business is to be stated.

From the foregoing it is clear that not only does a person dealing in or purchasing for the purpose of making up or manufacturing for re-sale, jewellery, old metal or marine stores have to take out a licence, but he has to specify the premises in which he proposes to deal or purchase ; the situation of these premises is recorded in the licence and the licensee has to put up a board outside them announcing to all and sundry that at that place he is licensed to deal in old metal, jewellery or marine stores, as the case may be.

Turning to the second schedule of the Licences Ordinance, the exact words used describing the calling are “ dealer licensed under the Jewellery, Old Metal and Marine Stores Ordinance, 1911, when the dealer does not hold a wholesale and retail or a retail licence in respect of the same premises ”. It is admitted that the appellant has neither a wholesale and retail licence nor a retail licence in respect of his premises. Having regard to the provisions of the Jewellery, Old Metal and Marine Stores Ordinance, it seems to me that the words “ in respect of the same premises ” can have but one meaning, namely, the premises which are specified in the licence under the last mentioned Ordinance, and, if this is so, the mere taking out of a licence under the Jewellery, Old Metal and Marine Stores Ordinance, in my view, *ipso facto*, makes the licensee a person exercising the calling of a dealer licensed under that Ordinance and s. 3 of the Licences Ordinance compels him to take out a licence as such unless he has a wholesale and retail licence or a retail licence in respect of the premises recorded in his licence under the Jewellery, Old Metal and Marine Stores Ordinance. What the licensee does or does not do at those premises seems to be quite immaterial in this connexion and s. 17 (1) of the Licences Ordinance has no relevance.

I think that the appellant was rightly convicted and the appeal will be dismissed.