

RONALD WILLIAM BALFOUR *v.* BRUCE H. SOUTHWICK

[Appellate Jurisdiction (Hyne, C.J.) April 6th, 1954.]

Licence Ordinance—s. 3 and 15—Pharmacy and Poisons Ordinance—whether retail licence required for sale by chemist of articles not drugs or poisons.

The appellant was the Clerk to the Suva City Council under whose directions the respondent was prosecuted for not possessing a retail licence under the provisions of the Licence Ordinance.

At the trial before the 1st Class Magistrate's Court, Suva, Counsel for the respondent argued that since the respondent was a duly registered pharmacist under the Pharmacy and Poisons Ordinance he was entitled to sell toilet goods, cosmetics and surgical articles. The court convicted the respondent but only because he had for sale Thermos flasks and coffee, objects outside the scope of the Ordinance.

On appeal by case stated at the appellant's request.

HELD.—A chemist and druggist licence limits a pharmacist to the sale of such commodities as are permitted to be sold by a pharmacist under the Pharmacy and Poisons Ordinance.

Cases referred to:—

Attorney-General v. Carlton Bank [1899] 2 Q.B. 158.

A. Lateef for the appellant.

R. Munro for the respondent.

HYNE, C.J.—At the hearing on the 22nd May, 1954, the learned Magistrate directed that the defendant was guilty of a breach of the Licence Ordinance, but only because he had for sale in his chemist shop Thermos flasks and coffee. The learned Magistrate found the following facts:—

- (a) that the respondent was a pharmacist carrying on business at Samabula, that he had taken out a licence as chemist and druggist but that he had not taken out a licence for a retail store ;
- (b) that in addition to medicines and drugs, the respondent sold toilet articles and similar articles which by practice everyone expects to be able to purchase in a chemist's shop ;
- (c) that the respondent sold thermos flasks and coffee.

The learned Magistrate was of the opinion that in the absence of any clear definition of the meaning of the term "chemist and druggist" this term should not be interpreted too strictly. He held further that the chemist and druggist licence covered the sale by him of all normal toilet articles and medical aids, but that it did not cover the sale of thermos flasks or coffee.

The questions for the opinion of this Court are—

- (1) Whether the exercise of the calling of a druggist and chemist involves not only the sale of drugs, chemicals and medicines, but also the sale of toilet articles such as soap, medical aids and appliances ; and

- (2) Whether the defendant's chemist and druggist licence covers the sale by him of all normal toilet articles which by long-standing custom everyone expects to be able to purchase in a chemist's shop.

It may be observed that the proceedings were instituted by the Suva City Council as a test case.

It is not disputed that the respondent is a registered chemist, and it is clear from the Pharmacy and Poisons Ordinance that a registered pharmacist alone may carry on the business of a pharmacist under that Ordinance.

It is submitted by Mr. Lateef, for the appellant, that under the Ordinance a pharmacist is permitted to do the following things:—

- (a) He may sell poisons.
- (b) He may dispense and compound drugs.
- (c) He may sell drugs and medicines.

Section 47 (1) of the Ordinance provides that no one but a registered pharmacist, or the assistant, manager or apprentice of a registered pharmacist, may sell drugs; and under section 55 only a registered pharmacist may sell poisons.

In view of the foregoing, Mr. Lateef submits that a pharmacist is therefore precluded from selling other goods, for which a specific licence is required.

Another point stressed by Mr. Lateef is that under Chapter 154 a chemist and druggist licence authorizes the holder to exercise the calling of a chemist and druggist only on the premises mentioned in the licence; the licence is not a licence for keeping a druggist and chemist shop. In that respect it differs from a storekeeper's licence, which authorizes the keeping of a wholesale and retail store.

Another point is that under the Licence Ordinance no specific provision is made for the things that a chemist may sell, nor does the Licence Ordinance define what amounts to the calling of a "chemist and druggist".

Mr. Munro for the respondent, on the other hand, submits that the calling is not restricted to the sale of drugs, medicines and poisons—if that were so, the Licence Ordinance would provide for this by referring to the calling of a "licensed pharmacist". Furthermore, he contends that this is a taxing Ordinance and should be construed strictly. It is true to say that the Courts formerly leaned against taxing Acts, but taxing Acts are now construed as are any others. In *Attorney-General v. Carlton Bank* [1899] 2 Q.B., 158, at p. 164, *Lord Russell, C.J.*, said: "In the course of argument reference was made on both sides to the supposed special canons of construction applicable to Revenue Acts. For my part I do not accept that suggestion. I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act."

Mr. Munro points out, and I agree, that difficulty has arisen by reason of the fact that there are three descriptive titles, namely, "chemist", "druggist" and "pharmacist"; and he submits that the titles of "chemist" and "druggist" are not synonymous with that of "pharmacist". Furthermore, he contends that as a licensed storekeeper can sell some articles which the public might call medicines, there is therefore a difference between "pharmacist" on the one hand, and "chemist and druggist" on the other. His final submission is that the calling of a chemist and druggist is not limited or controlled within the Licence Ordinance and that the use of the word "calling"

embraces the sale of every type of article, not specifically mentioned in the Licence Ordinance, which is commonly stocked by chemists and druggists as part of their normal stocks. I think there would be great difficulty in ascertaining what are "normal stocks".

I have carefully considered the submissions of both Counsel and I am of the opinion that a chemist and druggist licence limits the activity of a pharmacist to the sale of such commodities as are permitted to be sold by a pharmacist under the Pharmacy and Poisons Ordinance.

I agree that there is no definition of "chemist" or "druggist" in the Licence Ordinance, and it has been suggested that the three titles or names are not synonymous. It is a rule of interpretation that ordinary words shall, unless the context in which they are found suggests otherwise, be given their plain and ordinary meaning. It is not necessarily the etymological or dictionary sense which is to be applied, but the sense in which the words are used by the majority of people—the popular sense. (*Odgers, The Construction of Deeds and Statutes*, p. 28.) A "chemist" is defined in the Oxford Dictionary as "one who deals in medicinal drugs"; a "druggist" is defined as "one who deals in drugs". "Drug" is "an original, simple, medicinal substance, organic or inorganic, used by itself or as an ingredient of medicine". A "pharmacist" is defined as "a person skilled in pharmacy, a druggist or a pharmaceutical chemist" and the word "pharmaceutical" is given the meaning, "pertaining to or engaged in pharmacy". These are, I think, also the sense in which these words are used by the majority of people.

I am of the opinion that the three terms, "chemist", "druggist" and "pharmacist" are in fact synonymous, and that to the majority of people the three words have the same meaning and denote the same calling. So, therefore, when the Licence Ordinance uses the words "chemist and druggist" it is clear that the word "pharmacist" might equally well have been substituted for that phrase.

It is true that the Licence Ordinance does not specify what the chemist and druggist may sell, and it is necessary, therefore, in my opinion, to ascertain, by reference to the Pharmacy and Poisons Ordinance, what it is that represents the calling of a chemist and druggist. As I read this Ordinance, the calling of a pharmacist embraces the sale of poisons, the compounding, dispensing and selling of drugs and medicines, and no more. It follows, in my opinion, that a licence to exercise the calling of a chemist and druggist limits the holder of the licence to sell such things as a pharmacist may sell under the Pharmacy and Poisons Ordinance, and that if he wishes to sell other commodities he must take out the appropriate licence.

The answers to the questions posed in the case stated are, therefore—

- (1) The exercise of the calling of a chemist and druggist does not authorize the sale of toilet articles such as soap, medicinal aids and appliances; and
- (2) The defendant's chemist and druggist licence does not cover the sale by him of normal toilet articles which by long-standing custom everyone expects to be able to purchase in a chemist's shop.

If, therefore, a chemist and druggist wishes to sell articles other than those which a pharmacist may sell by virtue of the Pharmacy and Poisons Ordinance, he must take out an ordinary retail licence under section 15 of the Licence Ordinance.