Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Vauda v. *The Mayor and Councillors of Newcastle, from the Supreme Court of Natal; delivered 10th December* 1898.

Present:

LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

It appears to their Lordships that there is no substance in the argument presented in support of the Appeal.

The learned Counsel for the Appellant admitted that no appeal lies from the decision of the town council to whom and to whom alone by Sections 5 and 6 of Law 18 of 1897 an appeal is given from the decision of the Licensing Officer appointed under that Law. But they argued that the summons for a writ of review issued on the 19th of January 1898 under Section 8 of Law 39 of 1896 was not an appeal properly speaking but a proceeding in the nature of a writ of certiorari.

In attempting to avoid one peril obvious and fatal the learned Counsel for the Appellant seem to have exposed themselves to another almost equally obvious and certainly equally fatal. An application for a writ of certiorari is not granted as a matter of course. Some ground must be shown. In the present case the Appellant has not proved or even alleged any ground which

4559. 100.—12/98. [76]

could justify the issuing of a writ of certiorari or warrant any proceedings of that nature.

The summons of the 19th of January 1898 alleges four grounds for setting aside amending or correcting the proceedings of the town council (1) that the decision was "against the weight of evidence" (2) that the Appellant had held a retail license for 7 years "and he was not shewn to have forfeited his rights thereto" (3) that the town council "did not exercise a judicial mind in arriving at its decision" and (4) that the Licensing Officer was also clerk to the town council. As regards the first two objections it is obvious that however relevant and proper they might be in the case of an appeal on the merits they are not relevant for any other purpose. The third objection is so vague as to be unintelligible without more. The fourth is apparently founded upon an entry in the record of the minutes of the proceedings of the town council where it is stated that "at the outset" Mr. Laughton the advocate for the present Appellant and seven others in the same position "desired that his protest should be recorded "against any officer of the council being ap- "pointed to fill the position of Licensing Officer" and addressed "the council in support thereof." From that entry it would appear that the objection originally at any rate was not an objection to the town council exercising their jurisdiction under the circumstances (which certainly would not have been a very judicious topic "at the outset") but merely a protest intended to diminish the weight of the decision of the Licensing Officer as such or to show that there was some grievance in the connection between the Licensing Officer and the town council which might entitle the applicant to a favourable reconsideration of his case. It is difficult to see the force of the objection as applied to the jurisdiction

of the town council. The clerk is not a member of the council. It does not appear that he took any part in the proceedings in any shape or way. It does not even appear that he was present when the Appellant's case was heard.

In obedience to the exigency of the summons for a writ of review the minutes of the proceedings of the town council were put in on the Appeal to the Supreme Court. No other evidence was offered by the Appellant. It is not suggested that the record of those proceedings disclosed any ground for the Appellant's application as an application for redress in the nature of a writ of certiorari. It appears from the note of the Registrar of the Supreme Court that after the minutes of the proceedings of the town council had been read an objection was taken to the jurisdiction of the Court "to hear this review." The question of jurisdiction was then argued and after consideration the Court dismissed the appeal the Chief Justice dissenting.

Assuming that the appeal to the Supreme Court was in the nature of an application for a writ of certiorari and founding themselves on one or two expressions in the judgments detached from the context the learned Counsel for the Appellant maintained that the Supreme Court had laid down the proposition that under no conceivable circumstances could the Court interfere with the proceedings of the town council however improper their proceedings might be and they asked their Lordships to express their opinion on that general proposition. For the purpose of the decision of the question before their Lordships it is not necessary to consider that proposition at all. It is not the province of this tribunal to debate or resolve academical questions. But in truth the Supreme Court laid down no such proposition as that to which the learned Counsel for the Appellant addressed

themselves. Mason J. who gave the leading judgment after saying that he "must hold that "in these particular licensing appeals the juris- "diction of the Supreme Court is excluded" adds the following observation :—

"When either a licensing officer or a town "council proposes to exercise powers with regard "to trade licenses which it does not possess the "position of this Court would in all probability "be very different but that is not the state of "circumstances which is brought before us in "the present appeals."

Fennimore J. agreed with Mason J. though he arrived at the conclusion independently.

The confusion if and so far as there is any confusion arises from this—that in the argument at the Bar the application for review was treated as an application in the nature of an application for a writ of certiorari while before the Supreme Court it was treated by all parties as an ordinary appeal. The argument of the dissenting judge was that a direct appeal from the licensing officer to the Supreme Court was prohibited but that there was nothing to prohibit an appeal from the decision of the town council. And that was the view which the majority of the Court set themselves to combat. Neither in the proceedings before the Supreme Court nor in the Appellant's case is there the slightest trace of the view presented in the argument at the Bar. Indeed the substantial reason alleged in the Appellant's case as the ground of the Appeal was this :—"Because the Supreme Court ought to "have heard the Appellant's application and "should have determined and decided the same "upon the merits."

Their Lordships will humbly advise Her Majesty that this Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.