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.]

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Jan. 22, 29.

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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

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defendant had supplied intoxicating liquor, was an aboriginal native of India; and that in the absence of such evidence the defendant was not properly convicted. Secondly, it was contended that the evidence to support the conviction was that of accessories or accomplices, uncorroborated by independent witnesses, and that the magistrate should not have convicted upon such evidence. The second point may be dismissed from consideration, with this remark, that there was evidence *aliunde* which, if accepted by the magistrate, would be sufficient to corroborate the witnesses styled accessories and to warrant the conviction so far as it depends upon the credibility of the witnesses for the prosecution.

The first point raises an important question as to the proper construction to be placed upon the words "Aboriginal Natives of India" as used in s. 2 of the Liquor Prohibition Ordinance XXIV. of 1881. It is contended for the defence that the words "Aboriginal Natives of India" must be construed according to their literal meaning—the Liquor Prohibition Ordinance being in its effect a penal statute—that the evidence merely discloses that liquor was supplied to "An Indian Immigrant"; that it does not follow that an Indian Immigrant is necessarily "a Native of India," much less that he is an "Aboriginal Native of India"; and that no offence has been committed against the Liquor Prohibition Ordinance unless liquor is shown to have been supplied to "An Aboriginal Native."

The words of s. 3 of the Liquor Prohibition Ordinance XXIV. of 1881 are, as far as applicable, as follows,—

> Any person . . . . . who shall give, supply or in any way procure to or for any native . . . . . any liquor . . . . . shall be deemed guilty of an offence against this Ordinance.

By s. 2 the word "Native" is defined as including

within its meaning "Aboriginal Natives of India" among others. The question is whether there was sufficient evidence before the magistrate to satisfy him that the man Daulta came within the meaning of "native" as defined in s. 2. The evidence to this effect which the magistrate had before him was that of the man Daulta himself and that of the sergeant of Police in charge of the case. The former said, "I am an Indian immigrant"; the latter said "He is an Indian immigrant." Both unite in saying that the man came to this country in the Indian immigrant ship *Berar*.

Now when a man describes himself as an "Indian immigrant" what does he mean? He means that he is a "Native of India" who had come to this country as an immigrant; for the word "Indian" when applied to an immigrant means "a Native of India." There was therefore evidence before the magistrate that the man Daulta was "a Native of India." It was not necessary in order to establish that fact that the expression "Native of India" should have been used in the evidence. Any language from which the fact that the man was a native of India might reasonably be inferred was sufficient: and I think that such inference was fairly to be drawn from the use of the word "Indian." But it was contended by Mr. Garrick, it is not sufficient to show that the man Daulta was merely a "Native of India" he must be shown to be an "Aboriginal Native of India." Unless he can be shown to be an aboriginal native he does not come within the definition of the term "Native" as given in s. 2 of the Liquor Prohibition Ordinance 1881, and if he does not come within that definition it is no offence to supply him with liquor.

The force of this contention depends upon whether the words "Aboriginal Native" ought to be construed

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according to the literal etymological meaning or not. The general rule of construction of statutes, and, indeed all written instruments, is undoubtedly that the words used are to be understood in the literal and grammatical sense ordinarily given to them. For the defendant it is contended that the literal construction ought to be given to the words "Aboriginal Natives of India" because the Liquor Prohibition Ordinance is restrictive of the common law rights of the subject and is in its operation penal, though such a construction would defeat the object for which the Ordinance was passed and the intention of the Legislature in passing it. Is such a contention sound? Such a construction would certainly defeat the object of the Ordinance and the intention of the Legislature—assuming that object and that intention to have been to keep intoxicating liquors from being consumed by Indian immigrants—for it is obvious that in nearly every, if not in every, case it would be impossible to prove an Indian immigrant to be an "Aboriginal Native of India" in the sense of being a descendant of the first or original inhabitants of that country. Now though it is true, speaking generally, that it is a rule in the construction of statutes that the literal meaning of words should be given to them, yet the literal meaning may be departed from and the words receive a meaning contrary to the literal meaning when a literal construction would result in an absurdity or be inconsistent with the plain object and intention of the statute. In *Ex parte Walton. In re Levy* (1) Jessel, M.R., said, quoting Lord Selborne, L.C., in the *Caledonian Railway Co.* v. *North British Railway Co.* (2), "The more literal construction ought not to prevail if it is opposed to the intention of the Legislature, as

(1) L. R. 17 Ch. D. 746. (2) L. R. 6 App. Cas. at p. 122.

apparent by the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated." And in *Turtle* v. *Hartwell*, quoted in Broom's *Legal Maxims* 5th ed. p. 83, Lord Kenyon, C.J., laid it down that for the sure and true interpretation of all statutes (be they penal or beneficial, restrictive or enlarging of the common law), four things ought to be considered,—(1st) what was the common law before the passing of the Act, (2nd) what was the mischief for which the common law did not provide, (3rd) what remedy has been provided by the Legislature for such mischief, and (4th) the true reason for the remedy,—and the duty of the judge is to put such a construction upon the statute as shall suppress the mischief and advance the remedy. Let me consider then what object the Legislature had in view, what mischief it intended to remedy when it passed the Liquor Prohibition Ordinance XXIV. of 1881, which it must be conceded is restrictive of the common law rights of the subject, and let me then consider whether a literal construction of s. 2 of that Ordinance would be consistent with that object and intention, or be inconsistent therewith and lead to an absurdity.

Now the object of the Legislature was to prevent the consumption of intoxicating liquor by a certain class of persons in the community, including "Indian Immigrants." In ascertaining this to be the object and intention of the Legislature, I am not confined to the Ordinance itself. I am entitled to look at and consider previous legislation on the same subject. I am entitled to inquire what the law was before the Ordinance was passed; what end the Ordinance was designed to meet; what object the Legislature had in

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view. Now the law on the subject at the time of the passing of the Liquor Prohibition Ordinance XXIV. of 1881 was contained in Ordinance II. of 1881, and in the preamble to that Ordinance the object of the Legislature is declared to be "to make more stringent provisions against the supply of intoxicating liquors to Natives, Polynesians, 'Indian Immigrants,' and persons in like condition"; and in that Ordinance, by s. 3, the term "Natives" is declared to include within its meaning "Aboriginal Natives of India," among others. Now it is clear that in the Ordinance just referred to the Legislature did not intend to use the term "Aboriginal Natives" in its strict grammatical and etymological sense, but intended to include in that expression all "Indians" who were in the Colony as immigrants. A literal construction of the expression "Aboriginal Natives of India" would have exempted from the operation of that statute the very class, namely "Indian Immigrants," which the preamble tells us the Ordinance was designed to affect. In construing Ordinance No. II. of 1881 a literal construction of the expression "Aboriginal Natives of India" would have been obviously inconsistent with the intention of the Legislature. Now Ordinance XXIV. of 1881 has no preamble, but it is apparent from the body of the Ordinance that the Legislature in passing that Ordinance had the same object in view as it had in passing Ordinance II. of 1881, namely to prevent intoxicating liquors being supplied to "Natives," and in this Ordinance the expression "Natives" has the same definition as is assigned to that expression in Ordinance II. of 1881, viz., "Aboriginal Natives," that is to say, the words "Native" and "Aboriginal Native" are made synonymous. Now I have shown that the Legislature in using the expression

"Aboriginal Natives" in Ordinance II. of 1881 must be taken to have intended to include in that expression, among others, those natives of India who for the time being were immigrants in the Colony. Assuming then that such an intention existed when the Ordinance II. of 1881 was passed, I think it only reasonable to assume that a like intention existed when the Ordinance XXIV. of 1881, which deals with the same subject and has like objects, was passed. I think the expression "Aboriginal Natives" must be regarded as a careless and inaccurate phrase not clearly expressing the intention of the Legislature. I think that s. 2 of Ordinance XXIV. of 1881 should be read as if the word "aboriginal" did not appear therein, or appearing as if the expression "Aboriginal Native" was synonymous with "Native." I regard the expression "Aboriginal Native" as a tautological way of saying "Native."

I am led to this opinion from the history of the Liquor Prohibition Ordinance, and from the absurdity and the inconsistency with the plain object of the Legislature which would result from a literal grammatical construction being given to the expression "Aboriginal Native." The Indian immigrants who come to this country are composed of various races. It may be doubted whether any of these Indian immigrants are descended from the aboriginal, that is, primitive, people of India; but it cannot be doubted that it was the intention of the Legislature to keep intoxicating liquors from those immigrants irrespective of their racial descent. To construe the section literally would allow all "Indian Immigrants" except such as could be proved to be descended from the primitive people of India to be freely supplied with intoxicating liquors, and that in the teeth of an Ordinance which was designed to

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prevent the supply of intoxicants to this very class of persons. Such a construction, tending as it would to such a result would indeed be a construction *ad absurdum*, and one wholly inconsistent with the intention of the Legislature as apparent from the whole course of legislation on the subject. I am of opinion therefore that the expression "Aboriginal Natives of India" as used in Ordinance XXIV. of 1881 must be taken as synonymous with "Natives of India." The meaning of the word "Aboriginal" is flexible enough to justify this rendering, for in many dictionaries it is given as a synonym for "Native." Holding that view I am of opinion that there was sufficient evidence before the magistrate to warrant the conviction; for the man Daulta was proved to be an "Indian," and an Indian is a "Native of India." The appeal must therefore be dismissed and with costs.

Appeal dismissed with costs.