

POLICE *v.* STUART BARRY PHILP

[Revisional Jurisdiction (Vaughan, C.J.) January 3rd, 1952]

S. 79 of the Liquor Ordinance—legitimate reason for being on licensed premises.

The accused was charged with the offence of permitting natives to be on his licensed premises contrary to section 79 of the Liquor Ordinance.

The 2nd Class Magistrate at Navua held that since the accused was about to "check the permits" of the natives on the premises when the police arrived this was a legitimate reason for allowing the natives there.

HELD.—These facts did not constitute a legitimate reason.

[**EDITOR'S NOTE.**—Since no order on revision can be made in respect of an acquittal no judgment was delivered by His Lordship the Chief Justice in this case and therefore the following remarks do not strictly constitute a precedent since they are a note for the information of the Magistrate.

Section 79 of the Liquor Ordinance, 1946, reads as follows:—

. "79. Every holder of a publican's licence who permits . . . any native . . . to be on his licensed premises . . . without any legitimate reason for . . . remaining . . . shall be liable to a fine."]

No Counsel appeared.

VAUGHAN, C.J.—The accused was charged before the Magistrate at Navua with permitting natives to be on his licensed premises contrary to section 79 of the Liquor Ordinance, No. 3 of 1946. That section makes it an offence for a publican to permit a native who is not the holder of a certificate of exemption issued under section 69 to be or remain on his licensed premises unless the native in question has a legitimate reason for being there.

It is common ground that five Fijians not being holders of certificates of exemption were on the licensed premises of the accused, to the accused's knowledge. The Magistrate acquitted him on the grounds that the accused was about to "check their permits" when the police arrived, and that this contemplated checking of permits constituted a legitimate reason for the natives in question being on his premises. In other words, according to the Magistrate, a native who does not hold a certificate of exemption has a legitimate reason for being and remaining on licensed premises until such time as the publican thinks fit to ask him to produce his certificate and consequently the publican has committed no offence in permitting them to be there.

The Magistrate arrived at this astonishing conclusion by applying what he thought the law ought to be, instead of applying the law as laid down in the Ordinance. This is not the first time I have had to point out that the Magistrate is bound by the terms of the Law defining the offence and it is not lawful for him to put an interpretation upon those provisions which they will not bear and then base his

finding of guilt or innocence accordingly. One of the main intentions of the Liquor Ordinance, which is clear from its express provisions, is to prevent natives who are not exempted having access to licensed premises where liquor is sold—the fact that the Magistrate's finding, if good law, could defeat this intention should have been sufficient to warn him that he was on the wrong lines. There is absolutely nothing in the Ordinance to justify his dictum that the Ordinance is one "to safeguard persons against malicious attempts to incriminate publicans when prohibited persons are found in the public bar." Section 79 clearly penalizes the publican who permits unexempted natives to be or remain on his premises unless he, the native, is there for a legitimate reason (e.g. if he is a workman employed in repairing the premises). A publican who permits natives to come on to or remain on his licensed premises without first satisfying himself that they are exempted commits the offences specified in the section if it turns out that they are not exempted. In this case the publican, even if it was his intention to find out whether the natives on his premises were exempted or not, had done the very act which the section prohibits and he should have been convicted.