

130 STEWART v. JOHANNESBURG LIQUOR LICENSING COURT.

1914. November 26. BRISTOWE, J.

*Intoxicating liquors.—Renewal of licence refused.—Fresh evidence.—Power to rehear by licensing court.—Jurisdiction.—Ordinance 32 of 1902.—Proclamation 14 of 1902, secs. 18 and 27.*

Where a renewal of a licence is refused after due hearing, a licensing court is *functus officio* and has no power to re-hear an application for renewal in the absence of perjury or fraud.

*Held* further, that in those circumstances a superior court had no jurisdiction to order a re-hearing.

*Quaere*, whether a licensing court is an inferior court within the meaning of secs. 18 and 27 of Proclamation 14 of 1902.

Application for an order upon the licensing court authorising it to re-hear an application for renewal of a bottle liquor-licence. The facts appear from the judgment.

*H. H. Morris*, for the applicant: A licensing court is not an inferior court within the meaning of secs. 18 and 27 of Proclamation 14 of 1902. The Court has an equitable jurisdiction to grant a *restitutio in integrum* where there is manifest injustice. The licensing court ought to have taken and investigated the further evidence proffered. I admit, the licensing court has not power to re-hear an application for renewal of a licence which has expired, but this Court can supplement its powers by authorising an investigation. If so authorised the licensing court will make the investigation. See the case of *Gruslawsky v. Barkly West Licensing Court* (9 H.C.G. 313).

*J. van Hoytema*, for the respondent. On the question of jurisdiction, see *Jooste v. Witwatersrand Licensing Court* (1909, T.S. 26) at p. 33. On no other grounds can the Court interfere with the findings of a licensing court. Ordinance 32 of 1902 empowers a licensing court to refuse a renewal without giving reasons, and the ordinance gives no power to re-hear.

A case cannot be re-opened on the ground of fresh evidence. (He was stopped).

*Morris*, in reply: *Jooste's* case does not exhaust the grounds for interference. Other grounds are perjury, fraud, and it is submitted manifest wrong, *e.g.*, by reason of erroneous evidence. There is no danger of matters of this kind being re-opened after many years; see the law of prescription.

BRISTOWE, J.: This is an application for an order authorising the Johannesburg Licensing Court to re-hear an application for the renewal of a bottle liquor licence.

The applicant had held the licence for several years, but at the licensing session of December, 1913, a renewal was refused on objections by the police. The applicant brought the licensing court's decision in review before a judge in chambers in Pretoria, who dismissed the application, and an appeal from that decision was also dismissed.

At the session of June, 1914, the applicant applied to the licensing court either to re-hear the application for renewal or to grant him a new licence on the ground that in several important respects the evidence of the police at the previous hearing was erroneous. The Court held that it had no power to grant a new licence and that as regards the renewal it was *functus officio* and could not re-hear the case unless ordered to do so by this Court.

The case is put by counsel (1) on the ground of review and (2) on the ground that the Court has jurisdiction to set aside the decision of the licensing court for fraud or perjury.

I assume without deciding that a licensing court is not an inferior court within the meaning of sections 18 and 27 of Proclamation 14 of 1902, and that the case is within my jurisdiction. Opinions to this effect have more than once been expressed. But I do not think that this is a case for exercising the review jurisdiction even if I possess it. The grounds of this jurisdiction are clearly stated in the passage from *Jooste's* case which has been cited. None of these seem to me to exist in the present case.

The licensing court heard the case. No irregularity is suggested except that they held that they could not interfere.

As regards the application for a new licence it is admitted that that could not succeed, because the number of licences which the population warranted was complete.

Then as to the renewal. The Court heard the application for a renewal in December and refused it. It seems to me that that application having been heard and decided, the licensing Court had no further power in respect of it. In addition to which I do not think that an application for a renewal six months after the licence has expired can be called an application for a renewal at all. If a renewal as distinct from the grant of a new licence has any meaning it must I think be that the licence which is sought to be renewed is still in existence. If it has already expired, then it is

not a question of renewal, but of a new licence. Whether a decision of the licensing court can, like a judgment, be set aside for fraud or perjury, I do not know. I should be loth to think that no remedy could be found to meet a case of that kind. But no such relief can be obtained on this application. In the first place there is no evidence of fraud or perjury, though there are allegations of error, and in the second place such relief could only be obtained in an action where *vivâ voce* evidence could be taken.

The application must therefore be dismissed, with costs.

Applicant's Attorney: *A. L. Cohn*; Respondent's Attorneys: *Van Hulsteyn, Feltham & Ford*.

[G.H.]

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EX PARTE EISENBERG, N.O.

1914. November 26, December 1. BRISTOWE, J., DE VILLIERS, J.P.

*Insolvency.—Provisional Trustee.—Sec. 163 of law 13 of 1895.*

A provisional trustee has power to make application for a commission under sec. 163 of Law 13 of 1895.

Application for a commission under section 163 of law 13 of 1895. It was desired to examine a number of witnesses, one of whom it was alleged was shortly leaving the jurisdiction.

The application was made by the provisional trustee.

*G. Hartog*, for the applicant, moved.

BRISTOWE, J., granted the application to examine the witness who was about to leave.

The application in respect of the remaining witnesses was ordered to stand over for further evidence as to their being material.

*Postea* (December 1):—

On production of an affidavit by the provisional trustee as to the remaining witnesses.

DE VILLIERS, J.P., granted an order as prayed.

[*Reporter's Note*: The point as to whether a provisional trustee could apply under sec. 163 was raised by MASON, J. in *Ex parte Norman* (W.L.D., 1911, not reported), and answered in the affirmative. See sec. 72 of law 13 of 1895, and compare *Ex parte Robson* (1 R. 70).]

Applicant's Attorney: *E. Gluckmann*.

[G.W.]