

he had to pay this assistant was £40. If I assume the assistant gave no other assistance to the defendant in his business, even then there was a charge of £5 too much. This charge was sought to be justified by the plea that the defendant annually gives his clerk a bonus; if that is so the amount of such bonus should have been carefully worked out and allocated to his work done on this particular business.

The defendant also had some trouble in connection with the compromise effected, though in my opinion very little. With the meagre details before me as to how his time was actually occupied I am not prepared to allow him more than a fee of fifty guineas over and above the charge he has made in his account for out-of-pocket expenses, including Mr. Barnaschone's fee of £45.

The plaintiff is entitled to the balance, and judgment will be for £227 3s. 6d., less £52 10s., amounting to £174 13s. 6d., and costs.

Plaintiff's Attorneys: *Hutchinson & Bowen*; Defendant's Attorney: *P. C. Chivers*.

[G.H.]

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HUSSEN v. RECEIVER OF REVENUE, JOHANNESBURG.

1914. *March 26; April 16.* WARD, J.

*Gold Law.*—Act 35 of 1908, secs. 106, 107, 114.—Law 18 of 1913, secs. 3, 4.—*Jeweller's licence.*—*Coloured person.*

Sec. 107 (1) of Act 35 of 1908, as amended by section 4 of Law 18 of 1913, authorising the Receiver of Revenue in any district to issue a licence to a white person to carry on the business of a jeweller, precludes him from issuing such licence to a coloured person.

A coloured person is not entitled to be in possession of any articles containing precious metal made up, smelted or manufactured in the Union of South Africa, unless he has a licence to carry on the business of a jeweller.

Application by a Hindu, a man of colour, for an order directing the respondent to grant him a jeweller's permit, referred to in secs. 3 and 4 of the regulations annexed to Proc. 18 of 1914, upon payment of the fees due.

The facts appear from the judgment.

*H. H. Morris*, for the applicant.

*S. S. Taylor*, for the respondent.

*Cur. adv. vult.*

*Postea* (April 16).

WARD, J.: This is the application of Mahomed Hussen for an order from the Court directing the respondent to grant him a jeweller's permit under secs. 3 and 4 of the regulations annexed to Proc. 18 of 1914.

The applicant is a Hindu and coloured, and the respondent is the receiver of revenue for the district of Johannesburg. The applicant is a jeweller by trade, and has been engaged as a working jeweller in the Transvaal since the year 1903. This trade, which he learnt from his father, has been followed by his ancestors, as he says in his petition, "from all time."

On the 20th January, 1914, certain regulations were promulgated in the *Gazette* by His Excellency the Governor under the powers vested in him by sec. 4 of Act 18 of 1913. Under these regulations provision is made for jewellers' permits. Under sec. 3 of these regulations it is provided *inter alia* that "no person shall make up, smelt or change the form of material containing gold whether such material be wrought or unwrought, unless he is the holder of a jeweller's permit."

Under sec. 4 "the receiver of revenue in any district may issue to any white person a jeweller's permit for such district." "No jeweller's permit or renewal thereof shall be issued unless the commissioner of police certifies that the applicant is a fit and proper person to hold such permit."

The applicant applied to the commissioner of police for a certificate and was refused on the ground that he is a coloured person. It is not alleged that he is otherwise not a fit and proper person to hold such a permit. The receiver of revenue refused the permit on the ground that no certificate from the commissioner of police was produced and on the ground that the applicant is not a white man.

The decision of the case really turns on the point whether the receiver of revenue is entitled to refuse a permit to a coloured person. This to my mind turns upon the Gold Law.

Under the Gold Law, Act No. 35 of 1908, sec. 114, no coloured person is allowed to buy or sell, or be in possession of unwrought gold, unless he is handling unwrought gold in fulfilment of a contract of service with a person holding a licence or a banker or other person excepted under sec. 105, sub-sec. (1).

Under sec. 106 the Governor may from time to time make regulations for licensing persons authorised to deal in gold.

Under sec. 107 the receiver of revenue in any district may issue to any white person who produces a certificate a licence for such district. That is a licence to deal in unwrought gold as in sec. 106 (2) laid down. Therefore, under this section he could not give a licence to a coloured person; the reason of the provision being doubtless on account of the provision of sec. 114 referred to.

In 1913, Act 18 of 1913 was passed. Under this Act the definition of unwrought gold in sec. 104 of Act 35 of 1908 is replaced by a new definition under which "any bangles, chains, or any other articles whatever, containing precious metal made up, smelted, or manufactured in the Union except under such a licence as is hereinafter provided" are included in the term.

So that under sec. 114 no coloured person may now be in possession of such articles unless manufactured under the licence provided.

The licence is provided for in sec. 4, which also provides a new section to take the place of sec. 106. It says: "The Governor-General may make regulations, for the licensing of persons authorised to buy, sell, make up, smelt or otherwise to deal in or dispose of unwrought precious metal including the licensing of persons to carry on the business of jewellers or pawnbrokers. This now takes the place of sec. 106 (2), and sec. 107 of the old law remains the same but the words "a licence for such district" now mean a licence to carry on the business of a jeweller.

Consequently, when the regulations are made providing for the licensing of jewellers, sec. 107 provides that the receiver of revenue may issue such licence to a white person, and this precludes him in my opinion from issuing it to a coloured person. That, in my opinion, is the effect of the law. Under the former Gold Law the applicant could not carry on the trade of a jeweller insofar as it entailed the possession of non-manufactured precious metal. He is now forbidden to carry on the trade, even though he uses only precious metal that has been made up into an article of

commerce. This is doubtless hard upon the applicant and I cannot help thinking it is due to an oversight.

When sec. 107 was originally passed, the licence which was then issued by the receiver of revenue, was a licence to do something which a coloured person was specifically forbidden to do under sec. 114.

When the definition of unwrought precious metal was amended it was probably considered that a coloured person was forbidden to possess or deal in "any bangles, chains or any other articles whatever containing precious metal made up, smelted or manufactured in the Union." But this is hardly the correct way of looking at it. In the case of amalgam a coloured person is forbidden under any circumstances whatever from buying or selling it, and cannot get a licence so to do.

But in respect of a bangle made in the Union he is only forbidden to sell it if it is made without a licence. If this point had been noticed it may be that provision would have been made to alter sec. 107 so as to put jewellers' licences on a different footing from licences to buy and sell amalgam.

Of course, under the old Gold Law the applicant could not carry on the business of a jeweller insofar as it entailed the possession of non-manufactured precious metal.

However that may be, in the view I take of the matter, the applicant is not entitled to be in possession of any articles containing precious metal made up, smelted or manufactured in the Union, unless he has a licence to carry on the business of a jeweller, and the receiver of revenue is not entitled to give him such a licence under sec. 107.

The respondent is therefore correct in his contention, and the application must be refused, with costs.

Applicant's Attorney: *P. Morris*: Respondent's Attorneys: *Van Hulsteyn, Feltham & Ford*.

[G. W.]

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