

RODRIGUEZ v LICENSING AUTHORITY

Supreme Court
Unsworth, C.J.
19 September 1968

Practice and procedure — magistrates' court sitting as licensing authority — whether court can decide a disputed application after view without evidence.
Jurisdiction — whether appeal lies from magistrates' court as licensing authority — *Magistrates' Court Ordinance*, ss. 4, 5, 100 — *Licensing Rules*, r. 3(1).

An application for a liquor licence was heard by the magistrates' court sitting as the licensing authority. The application was not opposed, but a police officer drew the attention of the court to the number of licensed premises in the vicinity. This was disputed by the applicant. The court inspected the area and then reached its decision without hearing any evidence.

Held: Where the facts are in dispute, the magistrates' court sitting as a licensing authority is not entitled to decide an application on an inspection of the area without hearing evidence.

Per curiam. An appeal lies under s. 100 of the *Magistrates' Court Ordinance* (Cap. 95, 1965-69 Ed.) against decisions of the magistrates' court sitting as the licensing authority.

Cases referred to in the judgment.

R. v Sharman, ex p. Denton, [1898] 1 Q.B. 578.
Jeffrey v Evans, [1964] 1 All E.R. 536.

Appeal by case stated.

This was an appeal by case stated from a decision of the magistrates' court sitting as the licensing authority, refusing a licence under the *Licensing and Fees Ordinance* (Cap. 90, 1965-69 Ed.).

A.V. Stagnetto for the appellant.

2 December 1968: The following judgment was read—

This is an appeal by way of case stated under s. 100 of the Magistrates' Court Ordinance against a decision of the magistrates' court sitting as a licensing authority. I held in a preliminary ruling that an appeal lay under the above-mentioned section of the Ordinance since the magistrates' court as such has by law been appointed the licensing authority and, in these circumstances, the court was sitting and exercising jurisdiction as a magistrates' court by virtue of ss. 4 and 5 of the Magistrates' Court Ordinance.

The questions for the Supreme Court are whether:

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“(d) it was necessary to have evidence on oath with respect to the grant of the said licence to justify in law the refusal to grant the said licence.”

I propose to consider the last question first as the answer to it provides the key to the other questions which have been referred to me. The question that I am asked to decide is whether it was necessary to have evidence on oath with respect to the grant of the said licence to justify in law the refusal to grant the said licence.

I have already held that the lower court in hearing applications for licences is sitting as a magistrates' court for the reasons given in the preliminary ruling. In my view it follows from this that the procedure of the magistrates' court applies except in so far as different procedure may have been prescribed by the Licensing and Fees Ordinance or some other law. There is no special provision elsewhere relating to the mode of taking evidence in licensing cases and the facts must therefore, in my view, be established in accordance with the ordinary procedure of the magistrates' court.

It is the normal procedure of the courts in disputed cases to base their decisions on facts which have been proved or admitted. Now was this a disputed case? The facts are set out in paras. 4 and 5 of the case stated which read as follows:—

“4. No notice of opposition was received by the Clerk to the Justices nor by the applicant, but Inspector Joseph Morello of the Gibraltar Police said, when asked if he had any comments, that whilst the Police had no objection to the grant of the licence, he had been instructed to invite the Licensing Authority's attention to the fact that there was already a number of licensed premises in the vicinity of the proposed new premises and named the following licensed premises: 'The Smokey Joe' in Lynch's Lane, 'La Bayuca' and 'The Barnacle Club' in Turnbull's Lane, the 'Capri' and 'Gallo' in Main Street and the 'Belinda' in Crutchett's Ramp.

5. Mr. Stagnetto stated that the nearest licensed premises of those mentioned was 'Smokey Joe' and that was an eating house. Of the others 'La Bayuca' 'Capri' and 'Gallo' were essentially restaurants. In fact there were fewer bars than there used to be and named 'La Palma Real' and 'Victoria Bar' in Main Street and 'American Bar' in Engineer Lane as no longer existing.”

In my view this was a case in which the facts were in dispute and the normal procedure of a magistrates' court should have been followed.

The licensing authority did not follow the normal procedure of a magistrates' court. There was an inspection of the area but no oral evidence and, in my view, a court cannot decide a disputed case without hearing any evidence. Disputed facts must, in the absence of admission or agreement, be proved in the ordinary way.

For the reasons given above the reply to question (d) of the case stated is that it was necessary to have evidence on oath to justify in law the refusal to grant the said licence. The replies to the other questions are that the decision was wrong in law in so far as evidence was not taken on oath. It is unnecessary for the purposes of this appeal for me to deal with certain other arguments which were put forward as grounds for referring the case back for further decision.

In reaching my conclusion in this case I have considered the practice in England as set out in Paterson (76th Edition p. 43) and *R. v Sharman, ex p. Denton*¹ to the effect that (except in applications for renewal where, in the absence of agreement on the facts, evidence must be on oath) the licensing authorities have a discretion as to whether they require evidence to be on oath. But *Sharman's* case was before the decision in *Jeffrey v Evans*² referred to in the ruling which I gave earlier in this case and was based on the assumption that the licensing justices sit in an administrative capacity but I do not see how the licensing authority in Gibraltar can be sitting entirely in an administrative capacity when it is exercising jurisdiction under the Magistrates' Court Ordinance.

There is also the point that in England there is special statutory provision regarding evidence in licensing cases in that s. 7 of the Licensing Act 1964 only requires evidence on oath in cases of renewal. In Gibraltar there is no special provision of this kind and, in my view, the ordinary procedure of the magistrates' court applies.

I direct that the case be referred back to the magistrates' court in order that the court may reconsider the matter after it has heard evidence on oath.

¹ [1898] 1 Q.B. 578.

² [1964] 1 All E.R. 536.