(1878) 03 AHC CK 0006

Allahabad High Court

Case No: None

Empress of India		APPELLANT
	Vs	
Dharam Das		RESPONDENT

Date of Decision: March 22, 1878

Citation: (1875) ILR (All) 635

Hon'ble Judges: Robert Stuart, C.J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

Robert Stuart, C.J.

The facts in this case are different from those in the ease of Charles Seymour (Mr. Newton) (see ante, p. 630), for there are none of the circumstances of condonement and estoppel which characterise the latter, and the license had clearly and simply expired. In Seymour''s case the lapsing of the first license was not noticed by the authorities, and was only brought to their knowledge by Mrs. Newton herself going to the Collector''s office, they simply renewing the license and accepting the whole fee for the new period by anticipation; nor was there in that case anything to show any action on the part of the Collector as to the recalling the license or otherwise within the meaning and scope of ch. vi, of Act X of 1871, or of the rules respecting the license for three months drawn up and issued by the Chief Revenue authority, that is, in these Provinces, the Hoard of Revenue. I therefore held there that the defendant was not a person other than a licensed vendor within the meaning of Section 62 of the Excise Act.

2. The present case is quite different, for here we have the license simply expiring, and no attempt whatever on the part of the defendant to renew it, nor does he apply for renewal till after he had been convicted before the Magistrate for selling spirituous liquors without a license. He therefore violated Section 12 of the Excise Act, which provides that "spirituous liquors passed from distilleries according to the English method, fermented liquors manufactured at a licensed brewery, and

spirituous and fermented liquors imported either by land or by sea, shall not be sold except under license from the Collector," and laid himself open to the penalty enacted by Section 62. His conviction must therefore stand. But as to the sentence, I do not think that the case is a flagrant or serious one and calling for a severe penalty. Nor can I help remarking on the peculiar nature of the evidence on which the conviction is based. It is not the evidence obtained simply by the testimony of ordinary customers from among the public frequenting the defendant''s shop, but by that of a constable sent direct from the Collector''s office for the express purpose of detecting or rather involving the defendant in a violation of the Excise Law, and such evidence is, from its very nature, open to remark and even suspicion, although I do not mean to say that the constable who acted in this employment did otherwise than perform his duty fairly. The circumstance, however, in my view takes from the conviction the severe illegality which it otherwise might have shown, and renders a penalty of a fine of Rs. 100, or of one month''s imprisonment in the Civil Jail, excessive punishment, and I set that sentence aside, and in lieu of if I consider that one-fourth of the line imposed by the Assistant Magistrate would be sufficient, and therefore while affirming the conviction, I sentence the defendant to pay a fine of Rs. 25 without the alternative of imprisonment; the fine, if necessary, to he recovered by distress in due course of law. Hut if the Rs. 100 has been paid by the defendant, the difference between that sum and the Rs. 25 must be returned to him.