

(1878) 04 AHC CK 0009

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Mahindra Lal and
Another

RESPONDENT

Date of Decision: April 4, 1878

Hon'ble Judges: Turner, J

Bench: Single Bench

Judgement

Turner, J.

It appears that licenses for the sale of spirituous and fermented liquors by retail may be granted in the North-Western Provinces for any term not less than three calendar months and not exceeding one calendar year, and that in Allahabad they are usually granted for a period of three months. The fees leviable on such licenses in Allahabad is Rs. 8 per mensem, and it is a condition of the license that the fee should be paid in advance. The petitioners' mistress held a license for the sale of fermented liquors by retail for the period of three months, terminating on the 31st December 1877. The holder of the license did not give to the Collector any notice of her intention not to renew the license, nor had the license been recalled by the Collector prior to the 8th January 1878. From the 1st to the 7th January 1878, inclusive, the petitioners admit they sold by retail spirituous or fermented liquors. On these facts the Magistrate convicted them for that, not being licensed vendors, they sold spirituous or fermented liquors on diverse dates from the 1st, January to the 7th January 1878, inclusive, and u/s 62 [q.v. supra, text, 1 All. 630] of the Excise Act sentenced them to pay a fine of lis. 100, or to undergo imprisonment for one month in the Civil Jail.

2. It is contended that the conviction is wrong in that the petitioners were not unlicensed vendors, but sold under a license subsisting under the provisions of Section 32 ♦ of the Act, seeing that, their mistress had given no notice of her intention not to renew it, and it had not been recalled by the Collector.

3. The pleader for the petitioners relies on *Empress v. Seymour* (see ante, p. 630) decided by the learned Chief Justice of this Court on the 25th February last. The facts of that case are much the same as those of the present. The defendant was the servant of a person named Newton who held a license for a term of three months expiring on the 31st December 1877. The license was not, formally renewed until the 11th January 1877, when the proper fee was paid. Sales had nevertheless been made between January 1st and January 11th, and on account of these sales the defendant Seymour was prosecuted and convicted. The learned Chief Justice considered that any breach of the Act committed by the defendant had been condoned by the action of the Collector in receiving the fee and renewing the license, but he doubted whether, in advertence to the terms of Section 32 of the Excise Act, the master of Seymour could be held to be unlicensed, and therefore whether any offence had been committed. His Honour called attention to the absence from the Act and the rules of any direction as to the period within which the license was to be renewed. In the result he quashed the conviction. On the other hand the Government Pleader relies on a subsequent ruling by the same learned Judge. In *Empress v. Dharam Das* (see ante, p. 635) the facts differ from those of Seymour's case only to this extent, that it, was not shown the license had been renewed and the fee paid subsequently to the sales which led to the conviction. It, however, appears that on the 11th January, the same day on which the fee was accepted in Seymour's case, the defendant brought the fee into Court and tendered payment of it. In this case the learned Chief Justice supported the conviction. He distinguished it from Seymour's case, on the ground that in the latter there were circumstances of condonement in the acceptance of the fee and renewal of the license, while in the case of Dharam Das these circumstances were absent. Although in his petition Dharam Das urged that, in reference to the provisions of Section 32 of the Excise Act, he could not, be held to be an unlicensed vendor, it would seem that this argument was not pressed at the hearing for it is unnoticed in the judgment. The Government Pleader urges that, inasmuch as the Collector had not accepted the fee in the case before me, the decision must follow the ruling in Dharam Das's and not the ruling in Seymour's case, but I am constrained to say that I cannot, regard the acceptance by the Excise authorities of an excise fee in ignorance of a, contravention of the law as a condonation of the offence if the offence had been committed. The acceptance of the fee would not warrant the quashing of a conviction for sales made prior to the acceptance of the fee, if those sales were in fact illegal; and if the sales on which the prosecution was founded were illegal in Dharam Das's case, I should have held them equally illegal in Seymour's case. Even assuming the excise fee had been received with a full knowledge of the circumstances, I should hold that this might be ground for inflicting a light penalty and not for quashing the conviction. But I entirely agree with the reasoning of the learned Chief Justice in that part of the judgment in Seymour's case in which he gives expression to his doubts as to the legality of the conviction in reference to the terms of Section 32 of the Excise Act. The section declares that, unless otherwise

especially authorised by the Chief Revenue authority, licenses for retail sales shall be granted for one year, and if continued to the holders thereof, shall be formally renewed from year to year, but that every person holding such a license who may intend not to renew it shall give notice of his intention to the Collector, at least fifteen days before the year expires, and that if such notice be not given and the license be not recalled by the Collector, the license held and engagement entered into by every such person shall remain in force as if the said license had been formally renewed. By the rules made by the Chief Revenue authority in these Provinces licenses may and in practice are granted for periods of three months. To these licenses the provisions of Section 32 are clearly applicable. Notice must be given of the intention not to renew the license, and if no such notice is given and the license is not recalled, the license granted to, and the engagement taken from, the holder of the license remain in force as if they had been formally renewed. The Government Pleader has argued that this is to be read as implying that the holder of the license is to be held to his engagements, that he is responsible for the fee and for the performance of the conditions of the license, but that the authority conferred by the license no longer subsists. I cannot accede to a construction which is at variance with the clear language of the Act,-- "the license held shall remain in force as if the said license had been formally renewed." If it had been formally renewed it could not be doubted the holder would be a licensed vendor, and enjoy the privilege conferred by the license. Inasmuch as no notice has been given of an intention not to renew if and it has not been recalled, the holder still enjoys the privilege of selling in virtue of the authority conferred by it, while on the other hand he is liable to the payment of the fee and the performance of the other conditions imposed on him. On the facts found or allowed in this case, the petitioners cannot be convicted as unlicensed vendors. The sales admitted by them were made in virtue of the license which under the terms of Section 32 was still subsisting. The convictions must, then be quashed and the fines remitted.

4. It would certainly be well that the Chief Revenue authority should prescribe some period within which licenses should be brought for renewal, but as the law and rules now stand there is a remedy for any negligence on the part of the holder of the license, He is bound by a condition of his license to pay the monthly fee in advance. If he omits to do so he can be prosecuted for the breach u/s 57 of the Excise Act, and is liable to a fine of Rs. 50. In quashing the convictions u/s 62, I am urged to convict the petitioners u/s 57, but the petitioners are not the holders of the license, they are the servants of the holder.

◆ Duration and renewal of license.

[Section :42:--Unless otherwise especially authorized by the Chief Revenue authority, licenses for retail sale shall be granted for the term of one year, and continued to the holders thereof, shall be formally renewed from year to year.

But every person holding a, license, who may intend not to renew it shall give notice of his intention to the Collector at least fifteen days before the year expires.

If such notice be not given, and the license be not recalled by the Collector, the license held, and engagement entered into by every such person, shall remain in force as if the said license and engagement had been formally renewed.]