

(1881) 03 CAL CK 0017

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Nuddiar Chand Shaw,
Accused

RESPONDENT

Date of Decision: March 9, 1881

Acts Referred:

- Bengal Excise Act, 1878 - Section 15, 60

Citation: (1881) ILR (Cal) 832

Hon'ble Judges: Pontifex, J; Field, J

Bench: Division Bench

Judgement

Pontifex, J.

The accused has been convicted u/s 60 of " The Bengal Excise Act," VII (B. C.) of 1878. This Section enacts that, " every licensed retail vendor who sells by wholesale...shall be liable for every such offence to a fine not exceeding two hundred rupees. "

2. The Sessions Judge is of opinion that the conviction is bad: (1) because the sale of twelve bottles of beer and three bottles of brandy at the same time, is not a sale by wholesale; and (2) because the person convicted is not a retail vendor, but the servant of such a vendor.

3. We think that the Sessions Judge is right in his view of the law as to the second point.

4. As to the first point, there is more room for doubt. u/s 15 of " The Bengal Excise Act," the sale of a larger quantity of spirituous or fermented liquors than twelve quart bottles would be a sale by wholesale. If, therefore, more than twelve bottles of beer or of brandy, i. e., of the same kind of liquor, had been sold at one transaction, this would be a sale by wholesale. In this case two kinds of liquor were sold, and the quantity of neither kind exceeded twelve bottles. The case of such a sale is provided for by a Clause of the 15th Section, which is in fact an explanation, viz., " Under this

Section a sale of an assortment of spirituous or fermented liquors.....in greater quantity than is specified above, by a licensed retail vendor, is prohibited." If this provision stood alone without any other provision following or qualifying it, the sale in the present case would probably be within the prohibition. The Section then goes on to enact:---" The Board, may, by rule, define what shall be held to be an assortment for the purposes of this Section." So far as we have been able to discover, there is no evidence that the Board have made a definition of "an assortment" from which would be excluded such a sale as that in this case---a sale, that is, of twelve bottles of beer and three bottles of brandy. This being so, the sale in question probably comes within the prohibition in the explanation Clause above referred to, but for the decision of this case it is not necessary to determine this point, as we think that, upon the second ground, the convictions must be reversed.

5. We are clear that the licensed retail vendor himself is the only person liable to the penalty provided by Section 60, and that the servant of such vendor is not liable to conviction under this Section.

6. We set aside the conviction of Nuddiar Chand Shaw had u/s 60 of "The Bengal Excise Act," acquit him, and direct that the fine, if realised, be refunded.