

“attest” without qualification. A scribe who executes a document for and on behalf of the executant is not a person who “sees what passes” or “sees it executed,” when he himself does the very thing to which by subsequently signing as a witness he professes to bear witness.

For these reasons, I agree that the deed in question was not validly attested as a mortgage and I concur in the order to be made.

A. S. M. A.

*Appeal allowed ;
case remanded.*

1921.

SRISIDDHAR
GHOSE
P.
RAKSHAKALI
DASI.
BUCKLAND
J.

CRIMINAL REVISION.

Before Newbould and Suhraoardy JJ.

HEMANTA KUMAR SEN

v.

EMPEROR. *

1921

July 15.

License—Calcutta Suburban Police Act (Beng. II of 1866) ss. 18 and 51—

“Place of public resort and entertainment”—Stall for sale of aerated waters consumed on the road and not on the premises—Necessity of license for such stall.

A stall where aerated waters are sold and consumed on the public road and to which the public are not admitted, is not a “place of public resort and entertainment” within s. 18 of the Calcutta Suburban Police Act (Beng. II of 1866), and no license is, therefore, necessary for the keeping of such a stall.

The petitioner was the owner of a stall or booth set upon the narrow platform of a house by the side of the Kalighat Road where he sold aerated waters

* Criminal Revision No. 516 of 1921, against the order of Srigopal Bhattacharjee, Additional District Magistrate of Alipore, dated Sep. 21, 1920.

1921

HEMANTA
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and syrups to passers-by. He was placed on trial before Khondkar Ali Taper, a Sub-deputy Magistrate of Alipore, charged under s. 18 of Beng. Act II of 1866, with the sale of these articles without a license. It was proved that purchasers consumed the drinks while standing on the road, and returned the empty bottles and went away after paying the price, and that there was no space in the stall to accommodate them. The Magistrate convicted the petitioner, of the offence charged, on 7th August 1920. An appeal from the conviction was dismissed by the Additional District Magistrate of Alipore on the 21st September, but the High Court set aside the conviction and ordered a re-trial. The petitioner was again convicted and sentenced as before, on 17th February 1921, and obtained the present Rule.

Babu Birbhusan Dutt, for the petitioner. The stall is not a place of "public entertainment" within s. 51 of the Act, there being no admittance thereto of the public nor consumption on the premises. If it is not a place of "public entertainment," it is not one "of public resort" within s. 18.

No one appeared for the Crown.

NEWBOULD AND SUHRAWARDY JJ. The petitioner has been convicted under section 18 of the Calcutta Suburban Police Act II (B. C.) of 1866, and sentenced to pay a fine of Rs. 5. The petitioner has a stall on the Kalighat Road wherefrom he sells soda water and other aerated waters and non-intoxicating beverages. The only question that arises in this Rule is whether that place is a "place of public resort and entertainment" within the meaning of section 18 of Act II (B. C.) of 1866. In section 51 of the Act, "a place of public entertainment" is defined as "any place, whether

enclosed or open, to which the public are admitted, and where any kind of food, drink or drug is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in, or managing such place; and shall include a refreshment room, eating house, coffee-house, tea-shop, liquor-house, boarding-house, lodging house, hotel, restaurant, tavern, wine-shop, beer shop, spirit shop, *arrak* shop, *toddy*-shop, *ganja*-shop, *bhang*-shop and opium shop." The shop kept by the petitioner does not come within this definition because there is no place to which the public are admitted, nor are the drinks supplied to the public supplied to them for consumption on the premises. We do not think that, if it is not a place of "public entertainment," it can be held to be a place of "public resort" within the meaning of section 18 of the Act. The words used in that section are "or other place of public resort and entertainment," and they follow the words "keeps any coffee-house, boarding house, eating-house, lodging house." Applying the principle of *ejusdem generis* to these words, we hold that a stall in which soda water is sold not for consumption on the premises cannot be held to be a place of "public resort" within the meaning of s. 18 of Act II (B. C.) of 1866. Taking this view, it follows that the petitioner committed no offence in selling these articles without a license for the sale thereof. We, accordingly, make this Rule absolute, set aside the conviction of the petitioner and direct that the fine, if paid, be refunded.

E. H. M.

Rule absolute.

1921

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