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which he was subsequently found guilty on the 29th January, he was not subject to enhanced punishment under s. 75.

Mr. *L. Dillon*, for the appellant.

TURNER, J.—I am unable to support the enhanced sentence passed by the Judge under s. 75. That section declares that if any person, *having been convicted of any offence punishable under certain parts of the Indian Penal Code, shall be guilty of any offence punishable under those parts of the Code, he shall for every such subsequent offence be liable to the penalties therein declared.* The section then prescribes enhanced punishments for particular offences committed after conviction of any one of such offences and not merely on a second conviction. In the present case it is shown that the appellant had, a few days before the trial of the present offence, been convicted, but it is not shown that he had been convicted of one of the offences mentioned in s. 75, nor that he had been convicted of any offence before the commission of the offence for which he has received an enhanced sentence under s. 75 of the Indian Penal Code. I must quash the sentence passed under ss. 379 and 75 of the Code, and as the appellant has received the full punishment that could be awarded for an offence falling at the same time under ss. 328 and 379 of the Indian Penal Code, it is unnecessary to pass a sentence under s. 379 of the Indian Penal Code. The conviction and sentence under s. 328 are affirmed and the appeal dismissed.

Appeal dismissed

CRIMINAL JURISDICTION.

Before Mr. Justice Turner.

EMPERESS OF INDIA v. MAHINDRA LAL AND ANOTHER.

Act X of 1871 (Excise Act), ss. 32, 57, 62 - Illicit Sale—License.

A held a license for the sale of spirituous and fermented liquors by retail for a period of three months terminating on the 31st December, 1877. Prior to the 8th January, 1878, no notice was given by *A* of her intention not to renew the license, nor had the license been recalled by the Collector. Between the 1st January, 1878, and the 8th January, 1878, both days inclusive, *A*'s servants sold spirituous and fermented liquors by retail. On these facts *A*'s servants were convicted, under s. 62 of Act X of 1871, of the illicit sale of liquor. *Held*, following the opinion expressed in *Empress v. Seymour* (1) that the convictions were bad, as *A*'s license, under the provisions of

(1) See *ante*, p. 630.

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s. 32 of that Act, remained in force until she gave notice of her intention not to renew it or it was recalled by the Collector. The principle of the decision in *Empress v. Seymour* dissented from.

A should have been prosecuted under s. 57 of the Excise Act for not paying her monthly fee in advance.

THIS was a reference by Mr. H. Lushington, Sessions Judge of Allahabad, under s. 296 of Act X of 1872, for the orders of the High Court. The Sessions Judge referred the proceedings of Mr. J. B. Thomson, Magistrate of the first class, in the case of Mahindra Lal and Nilmoni Deh: These persons were convicted by the Magistrate, under s. 62 of Act X of 1871, of selling liquor without a license from the Collector. The Sessions Judge referred the proceedings on the ground that the Magistrate's order was contrary to law.

Babu *Jogindro Nath Chaudhri*, for Mahindra Lal and Nilmoni Deh.

The *Junior Government Pleader* (Babu *Dwarika Nath Banarji*), for the Crown.

Justice to the Crown, 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 fee 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 under s. 62 of the Excise Act sentenced them to pay a fine of Rs. 100 or to undergo imprisonment for one month in the Civil Jail.

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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 s. 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.

The pleader for the petitioners relies on *Empress v. Seymour* (1) 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 s. 32 of the Excise Act the master of ^{received} *Seymour* could be held to be unlicensed and therefore whether any ^{of falling} 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* (2) 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 s. 32 of the Excise Act, he

(1) See *ante*, p. 630.(2) See *ante*, p. 635.

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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 s. 32 of the Excise Act. That section declares that, unless otherwise specially 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 s. 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

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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 it 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 a license which under the terms of s. 32 was still subsisting. The convictions must then be quashed and the fines remitted.

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 under s. 57 of the Excise Act, and is liable to a fine of Rs. 50. In quashing the convictions under s. 62 I am urged to convict the petitioners under s. 57, but the petitioners are not the holders of the license, they are the servants of the holder.

Convictions quashed.

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APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Turner.

BARMANI BIBI AND OTHERS (DEFENDANTS) v. HULASA KUAR AND ANOTHER (PLAINTIFFS).*

Redemption of Mortgage—Acknowledgment of the Mortgagor's Title signed by Mortgagor's Agent—Act IX of 1871 (Limitation Act), sch. ii, art. 148.

Held, following the decision of the Privy Council in *Luchmee Buhsh Roy v. Runjeet Roy Pandey* (1) under Act XIV of 1859, that an acknowledgment of the

*Second Appeal, No. 1208 of 1877, from a decree of Babu Ram Kall Chaudhuri, Subordinate Judge of Cawnpore, dated the 31st May, 1877, affirming a decree of Manshi Man Mohan Lal, Munsif of Fatchpur, dated the 25th November, 1875.

(1) 13 B. L. R. 177.