

lieve it to have been the intention of the Legislature to punish an innocent person like Mrs. Newton who was guilty of nothing but a very intelligible, and, in my judgment, excusable, little neglect or delay, which showed no intention on her part to cause any of the mischief against which the Excise Act is directed.

For these reasons I set aside the conviction and sentence in this case, and direct the fine of Rs. 100, if it has been paid, to be returned to the applicant.

Conviction quashed.

CRIMINAL JURISDICTION.

Before Sir Robert Stuart, Kt., Chief Justice.

EMPRESS OF INDIA *v.* DHARAM DAS.

Act X of 1871 (Excise Act), ss. 12, 62, and ch. vi—Illicit Sale of Liquor—License.

D was the holder of a license for the sale of spirituous and fermented liquors by retail for a period terminating on the 31st December, 1877. On the 10th January, 1878, his license not having been renewed by the Collector, *D* sold certain spirits by retail. On these facts he was convicted of the illicit sale of liquor. Subsequently to his conviction his license was renewed. *Held* that, under such circumstances, his conviction was good. *Empress v. Seymour* (1) distinguished.

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. The petitioner was the holder of a license for the sale of spirituous and fermented liquors by retail for a period of three months terminating on the 31st December, 1877. On the 10th January, 1878, his license not having been renewed, he sold certain spirits by retail. On these facts he was convicted by Mr. J. B. Thomson, Magistrate of the first class, of the illicit sale of liquor, under s. 62 of Act X of 1871. The petitioner did not apply for a renewal of his license until after his conviction.

Babu Jogindro Nath Chaudhri, for the petitioner.

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

STUART, C. J.—The facts in this case are different from those in the case of *Charles Seymour* (*Mrs. Newton*) (1), for there are none of the circumstances of condonement and estoppel which characterise

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

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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 licenses for three months drawn up and issued by the Chief Revenue Authority, that is, in these Provinces, the Board of Revenue. I therefore held there that the defendant was not a person other than a licensed vendor within the meaning of s. 62 of the Excise Act.

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 s. 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 s. 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 it I consider that one-fourth of the fine 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 be recovered by distress in due course of law. But if the Rs. 100 has been paid by the defendant, the difference between that sum and the Rs. 25 must be returned to him.

Conviction affirmed.

APPELLATE CRIMINAL

Before Mr. Justice Turner.

EMPRESS OF INDIA v. MEGHA.

Act XLV of 1860 (Penal Code), s. 75—Punishment.

Held that, where a person commits an offence punishable under ch. xii or ch. xvii of the Indian Penal Code punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject on being convicted of the second offence to the enhanced punishment provided in s. 75 of the Indian Penal Code.

On the 22nd January, 1878, one Megha was convicted by Mr. H. G. Keene, Sessions Judge of Agra, under ss. 109 and 328 of the Indian Penal Code, of abetting the administering to one Khushal of a stupefying drug with intent to commit theft. In addition to the offence of which he was convicted, he had been charged, under s. 379 of the Indian Penal Code, with theft. On the 29th January, 1878, he was convicted, under s. 328 of the Indian Penal Code, of administering to one Ali Bakhsh a stupefying drug with intent to commit theft, and also, under s. 379, of theft. He was sentenced under s. 328 to rigorous imprisonment for ten years, and, with reference to his previous conviction on the 22nd January, 1878, under ss. 75 and 379 to transportation for life. Against this second conviction Megha appealed to the High Court, contending that, inasmuch as he had not been found guilty of theft on the 22nd January, 1878, s. 75 was not applicable; and that, assuming he had been found guilty of theft on that date, inasmuch as he was not found guilty until after he committed the theft of

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