

CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1890.

QUEEN-EMPRESS *v.* SHERIAR ARDESEER ERA'NI.*

December 18.

Police Act (XLVIII of 1860), Sec. 11, Cl. 2—License—Tea and sodawater shops—Construction.

The words "hotel, tavern, shop or place" in the second clause of section 11 (1) of the Police Act (XLVIII of 1860) are wide enough to include every place mentioned in the first clause of that section.

THIS was a reference by W. R. Hamilton, Second Presidency Magistrate, Bombay, under section 432 of the Criminal Procedure Code (Act X of 1882).

The reference was in the following terms:—

"Sheriár Ardeseer Eráni and three others have been charged before me with keeping tea and sodawater shops without a license from the Commissioner of Police. The question is whether such shops require to be licensed.

"Under Act XIV of 1842 coffee shops, eating houses, and places of public resort required a license from the Court of Petty Sessions. The fees, &c., levied under the Act were applied, it seems, towards keeping the town clean, and when a municipality was established by Act XIV of 1856, the former Act was repealed. Neither by the new Act, nor by any subsequent Municipal Act has the power to levy taxes on coffee houses, &c., been revived.

"By the Police Act XLVIII of 1860, section 11, persons in Calcutta and Madras who kept coffee house, &c., were required to

*Criminal Reference, No. 147 of 1890.

(1) Section XI of Act XLVIII of 1860 provides as follows:—"Whoever, in the Towns of Calcutta and Madras has or keeps any hotel, tavern, punch-house, ale-house, arrak or toddy shop, or place for the sale or consumption of gánja, chandul, or other preparation of opium, hemp, or other intoxicating drug, plant, or substance, or any eating-house, coffee-house, boarding-house, lodging-house or other place of public resort and entertainment, wherein provisions, liquors, or refreshments are sold or consumed (whether the same be kept or retailed therein or procured elsewhere), without a license from the Commissioner of Police; and

whoever, in the town of Bombay has or keeps any such hotel, tavern, shop or place, or who sells by retail in any place any spirituous or fermented liquors without such license, shall be liable to a fine not exceeding fifty rupees, &c."

take out a license. A separate clause of the same section applied to Bombay, and under it a person who kept a hotel, tavern, toddy shop, or place for the sale of gānja, or who sold spirits or liquors by retail was required to have a license.

“The section, clause 1, has been repealed, but the clause applying to Bombay is still in force. To understand it the whole section, as it stood originally, must be referred to.

“The places requiring a license are about the same in all three towns. If they are exactly the same, it is evident that a separate clause would not have been framed for Bombay, and that the obvious wording would have been ‘whoever in the towns of Calcutta, Madras, and Bombay.’ Instead of this arrangement the first clause requires certain places to be licensed in Calcutta and Madras, and a separate clause makes provision for Bombay. There must have been a reason for this difference, and this reason is that in Bombay coffee houses, boarding houses, &c., were not required to be licensed since 1856, and Police Act of 1860 did not revive the old practice.

“The grammatical construction of the words also supports this construction. ‘Whoever in Bombay keeps any such hotel, tavern, shop or place’ refers to the opening words of the section, *viz.*, whoever in Calcutta keeps any hotel, tavern, punch-house, ale-house, arrak or toddy shop, or place for the sale or consumption of gānja, opium, &c.’ The words which follow apparently apply to Calcutta and Madras only, *viz.*, ‘or any eating-house, coffee house, boarding-house, lodging-house, or other place of public resort and entertainment, wherein provisions, liquors, or refreshments are sold or consumed.’ In these towns such places must have a license whether they sold liquors or not, whereas in Bombay such places do not require a license, unless spirits or beer is retailed in them. The words applying to Bombay are ‘who sells by retail in any place any spirituous or fermented liquors.’

“On general grounds it is not easy to understand why tea stalls and coffee shops should have a license from the Commissioner of Police any more than ghee shops or sweetmeat shops.

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The fact was intelligible when the fees were raised for the purposes of the Municipality. It ceased to be intelligible when the Municipality of Bombay ceased to levy fees from these places."

PBE CURIAM:—The words "hotel, tavern, shop or place" in the second clause of section 11 of Act XLVIII of 1860 are wide enough to include every place mentioned in the first clause of the section.

APPELLATE CIVIL.

FULL BENCH.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood,
and Mr. Justice Candy.*

1890.
December 22.

MEER KAISUR KHAN MURAD KHAN, (PLAINTIFF), v. EBRAHIM
KHAN MUSA KHAN, (DEFENDANT).*

Auction-sale—Mortgage lien—Certificate of sale—Stamp.

Where property is sold at a Court sale subject to a mortgage lien, the stamp upon the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved.

Shri Nagindas Jeychand v. Halalkhore Nathwa Gheesla (1) followed.

THIS was a reference made by A. C. Trevor, Acting Commissioner in Sind, under section 46 of the Indian Stamp Act (I of 1879).

Originally the reference was made by the Acting Collector of Karachi under section 45 of the Stamp Act to the Acting Commissioner, who submitted the point referred to him for the opinion of the High Court.

The Acting Collector of Karachi made the reference in the following terms:—

"In execution of a decree obtained by one Meer Kaisur Khan Murad Khan in the District Court at Quetta against Ebrahim Khan Musa Khan, one-third share of several landed properties in Karachi was sold by the District Court, Karachi, and was purchased by the decree-holder for Rs. 4,010, but in the certificate

* Civil Reference, No. 18 of 1890.

(1) I. L. R., 5 Bom., 470.