

an attesting witness having been affixed after execution, is sufficient to make the instrument void. We think, however, that that decision goes further than the English authorities justify, or than it would be expedient to hold in this country. In *Suffell v. Bank of England*⁽¹⁾, which is relied on in the judgment in the above case, it was doubtless decided that an alteration may be material, although it does not affect the contract; and in that case it was held that as the number on Bank of England notes was an essential part of the notes regarded as currency, the change in those numbers should be regarded as material. But we agree with the Calcutta Division Court in *Mohesh Chunder v. Kámini Kumári Dabia*⁽²⁾, that "to hold the addition of a name to those of the attesting witnesses of a document not requiring attestation a material alteration, would be going beyond anything to which the reasoning of the English Judges properly leads." We must, therefore, reverse the decree of the Court below and pass a decree for the plaintiff for Rs. 500 without interest, as it appears that the Rs. 500 was offered to the plaintiff by the defendant in 1884 and refused. Parties to pay their own costs throughout.

1890.

VENKATESH
PRABHU
2.
BABA
SUBRAYA.

Decree reversed.

(1) L. R., 9 Q. B. D., 555.

(2) I. L. R., 12 Calc., at p. 316.

CRIMINAL REFERENCE.

*Before Mr. Justice Birdwood and Mr. Justice Candy.*QUEEN-EMPRESS *v.* RA'MCHANDRA MA'TA'DIN.*

A'bkári (Bombay) Act (V of 1878), Secs. 45 and 35—Servants of a holder of a license not punishable.

1890.

July 3.

Under Section 45 (c) of the Bombay A'bkári Act (V of 1878) the servants of the holder of a license granted under the Act cannot be made liable for a breach of the conditions of the license.

Though under section 53⁽¹⁾ of the Bombay A'bkári Act (V of 1878) the holder of a license under the Act is responsible, as well as the person there described as

* Criminal Reference, No. 37 of 1890.

(1) Section 53 of Bombay Act V of 1878 provides:—The holder of a license, permit or pass under this Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting on his behalf under sections 43, 44, 45, or 46 as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

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“the actual offender”, for any offence committed by any person in his employ or acting on his behalf under sections 43, 44, 45, or 46 as if he had himself committed the offence, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence, yet section 45 does not make “the actual offender,” if he be the servant of a licensee, punishable, unless he is himself the holder of a license granted under the Act.

THE accused was a servant of a licensed vendor of country liquor. He held a *nokarnāma*, which was merely a permit to sell liquor granted by his master, but not a license issued under the Bombay Ābkāri Act (V of 1878). He was convicted by the Magistrate (First Class) of an offence under section 45 (c)⁽¹⁾ of the Act and sentenced to pay a fine of Rs. 40.

The District Magistrate, feeling doubtful as to whether the conviction was sustainable under section 45 of the Act, as the accused was not the holder of a license granted under the Act, referred the case to the High Court under section 438 of the Code of Criminal Procedure (Act X of 1882).

There was no appearance for the Crown or for the accused.

The judgment of the Court (Birdwood and Candy, JJ.) was as follows :—

PER CURIAM :—The accused, who is a servant of a licensed vendor of country liquor in Khāndesh, was convicted by the Magistrate, First Class, of an offence under section 45 (c) of the Bombay Ābkāri Act, 1878, which provides a penalty for the holder of a license granted under the Act, who commits any act in breach of any of the conditions of his license not otherwise provided for in the Act. The Magistrate, First Class, was of opinion that, as the accused held a *nokarnāma*, which was signed by the Collector, he came within the provisions of the section. But the District Magistrate, who has referred the case to this Court under section 438 of the Code of Criminal Procedure, reports that the *nokarnāma* is not a license under the Act. The form of *nokarnāma* which he has sent us is a permit to sell liquor granted by the holder of a license to the servant whom he employs in his shop. Though it is countersigned by the

(1) Section 45 (c) provides as follows :—Whoever, being the holder of a license, permit or pass granted under this Act, commits any act in breach of any of the conditions of his license not otherwise provided for in this Act, shall be punished with fine which may extend to one hundred rupees.

Collector, it is not granted by him. Following, therefore, the ruling of this Court in the cases of *Imperatrix v. Gaffur* (Criminal Ruling of the 6th August, 1885), *Imperatrix v. Gopál Vishram Devkar* (Criminal Ruling of the 26th July, 1888), *Imperatrix v. Rámji Rághoji* (Criminal Ruling of the 15th November, 1888), and *Imperatrix v. Pándú* decided on the 19th September, 1889, and differing from the ruling in *Imperatrix v. Fattu and Botu* (Criminal Ruling decided on 21st February, 1889), we reverse the conviction and sentence passed upon the accused Rámcharan Mátádin, and direct that the fine, if paid, be restored. In so doing, we notice that section 53 of the Bombay Abkári Act (V of 1878) provides that "the holder of a license under the Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting on his behalf under sections 43, 44, 45 or 46 as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence." But section 45 of the Act, which alone it is necessary to refer to in connection with the present case, does not make "the actual offender," if he be, as in the present case, the servant of a licensee, punishable, unless he is himself the holder of a license. Section 53, in effect, provides that, except under certain circumstances, it shall not be a valid defence to a prosecution against the holder of a license for certain offences under the Act, to say that the accused person did not actually commit the offence complained of himself, but that his servant, or some one acting on his behalf, was the real offender. When the breach of the master's license is committed by the servant, the master is punishable, and he alone, unless the servant also holds a license under the Act; for it cannot be inferred, from the description in section 53 of the servant in such a case as the "actual offender," that he also is liable to a penalty under any of the sections specified in section 53, unless his act strictly falls under those sections. It is clear that to a servant not being the holder of a license, section 45 of the Act has no application, and, therefore, section 53 has no application to the accused in the present case.

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