

(1889) 03 CAL CK 0005
In the Calcutta High Court

Boistub Churn Nairn and Others

APPELLANT

Vs

Wooma Churn Sen

RESPONDENT

Date of Decision : 06-03-1889

Acts Referred:

Citation : (1889) ILR (Cal) 436

Hon'ble Judges : Wilson, J;Trevelyan, J

Bench : Division Bench

Judgement

Wilson, J.—The principal question which has been raised before us in this reference is whether a contract for the sale of fermented liquor, by a person who has not obtained a license under Bengal Act VII of 1878, is illegal and therefore void.

2. The sections bearing upon the matter are these: Section 4 has defined exciseable articles as including spirituous and fermented liquors. Section 11 says that no person shall sell any exciseable article without a license from the Collector. Section 53 says whoever manufactures or sells any exciseable article without a license shall be liable to a fine not exceeding Rs. 500 for every such manufacture or sale, and then come the provisos, with the last of which I shall deal presently.

3. A number of cases have been cited to us from the English Courts upon the question, in what cases and under what statutes the imposition of a penalty is to be construed as intended to prohibit the act to which the section refers, and in what cases that penalty should be regarded as only a means for protecting the revenue.

4. Two tests have been applied in many of the cases. First, in a number of cases it has been said, and the view has been acted upon, that in an Act intended only for the raising of revenue and the protection of that revenue, a clause imposing a penalty may well be construed, not as prohibiting a transaction in such a sense as to make it illegal and void, but as providing a means of enforcing the liability

of the person on whom the penalty is imposed.

5. If that test be applied in the present case, it seems to me that the conclusion at which the Judge of the Small Cause Court has arrived is correct; because it seems to me clear that the Act with which we are dealing is not, and was never intended to be, a mere Act for the protection of the revenue, but that it is an Act having other objects of public policy in view as well. In the first place we should be shutting our eyes to what is a matter of common knowledge, that in this country as well as in England for many years past, from a period long before this Act was passed, public men have never supposed that the regulation of the traffic in intoxicating liquors is to be dealt with upon considerations of revenue alone. In the second place, when we turn to the Act itself, I think the same thing is apparent from its express language, in which respect it is unlike the Act of 6 George IV, c. 51, under which several of the cases cited to us were decided, particularly the case of *Smith v. Mawhood* 14 M. & W. 452. The preamble of the Act is a good deal wider than if the object were merely the protection of the revenue. It is this: "Whereas it is expedient to consolidate and amend the laws relating to the manufacture, sale and possession of exciseable articles;" and there is another object, "the collection of the revenue derived therefrom;" and as we go through the Act, we find that these two objects are kept, side by side, in view, the regulation of the drink traffic in the interests of the public, and the protection of the revenue.

6. This is particularly apparent from certain sections in the Act. Section 14 was referred to, and it is not without weight. The 29th section is an important section, because it shows that a license is to be cancelled, not only on grounds affecting the revenue, but on grounds affecting the character of the holder, showing, I think, clearly, that in that section at any rate the Legislature had in view public morals, as well as the protection of the revenue.

7. Then Section 62 has been referred to, and I think rightly referred to, because it shows that a difference is made between the holding the same article for a purpose connected, and for a purpose not connected, with the traffic in intoxicating drinks.

8. Then Section 67 expressly deals with cases of misconduct on the part of a person holding a license, and the permission of misconduct by such a person of a character directly connected with public morals and not with the receipts of revenue. And again, Section 80 is another special provision relating to the case of cantonments. The object of Section 80, I apprehend, can be nothing but the securing of the discipline, the morals and good conduct of the troops in cantonments. The consequence then to my mind is, that both on general principles and the terms of the Act itself, this Act cannot be said to be a mere Revenue Act, but it is an Act having no doubt the protection of the revenue in view but having in view also important objects of public policy.

9. Another test has been applied in various cases in order to determine whether

the penalty imposed by an Act was intended to create a prohibition so as to invalidate a specific act of dealing in violation of the law in which the penalty is to be found, and that is, to see whether the penalty is imposed in general terms for the carrying on of a trade, or for the omission of some preliminaries which the law imposes on the opening of a trade, or some such general purpose as that, or whether the penalty is imposed on each specific act of dealing. In the latter class of cases, the Courts have been prone to construe the penalty as creating a prohibition, and therefore vitiating each transaction.

10. If that test be applied in this case, it is clear that the penalty is imposed on each specific act. Section 53 of the Act imposes, for selling an exciseable article without a license, a fine of so many rupees for every such sale. Thus what the Legislature had in view was not merely the general carrying on of the trade of a trader, but every specific act of sale. This is the more apparent from some of the provisos which follow the general words in that section. The third proviso says that "Nothing contained in the first clause of this section applies to the sale of any imported spirituous or fermented liquors purchased by any person for his private use and so disposed of upon such person quitting a station or after his decease." That proviso shows that in the view of the framer of the section, if it had not been for the proviso, any officer who, on being ordered from one station to another in Bengal, sold his stock of wine to his successor, or to anybody else, would be liable to the penalty if he did so without having a license; and that if the executor of any gentleman dying in Calcutta were to sell his stock of wine, without taking out a license, he would, but for the proviso, be liable to a penalty. All this shows that the thing which the Legislature had in view was any act of sale; and that according to the authorities is strong to show that the penalty is imposed with the view of prohibition.

11. The result then is, that, according to the authorities, this case falls within the class of those in which the penalty is imposed for the purpose of prohibition, and not of those in which it is imposed solely for the benefit of the revenue.

12. Several cases decided in the Indian Courts have been cited, but they do not throw a very strong light upon this case. They related not to contracts of sale but contracts of a different character. The result is that, in my opinion, we ought to answer the fourth question referred to us in the affirmative, and as that disposes of the whole case, it is unnecessary to answer any of the others.