

1890
DEC. 17.

APPEL-
LATE
CIVIL.

15 B. 527.

Collector's hands in direct contradiction of the law. We follow that ruling, and as in the present cases the allegation amounts to no more than that the partition made is an unequal one, we think that the Subordinate Judge had no power to interfere. For this reason we confirm the decrees with costs. The complaining parties can, if so advised, apply for redress to the Collector.

Decrees confirmed.

15 B. 530.

[530 CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* SHERIAR ARDESEER ERANI.*
[18th December, 1890.]

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

The words "hotel, tavern, shop or place" in the second clause of s. 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 s. 432 of the Criminal Procedure Code (Act X of 1882).

The reference was in the following terms:—

"Sheriar Ardepeer Erani 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seems, towards keeping the town clean, and when a Municipality was established by Act XIV of 1856, the former Act was repealed.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, s. 11, persons in Calcutta and Madras who kept coffee-house, &c., were required to [531] 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

* 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, arrack or toddy shop, or place for the sale or consumption of ganja, chandu, 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."

the sale of ganja, or who sold spirits or liquors by retail was required to have a license.

"The section, cl. 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, punchhouse, ale-house, arrack or toddy shop, or place for the sale or consumption of ganja, 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. [532] 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."

OPINION.

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

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