

Present : Garvin J.

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195—M. C. Colombo, 4,979.

Municipal Councils Ordinance—Licence to carry on a dangerous or offensive trade—Chairman's right to limit the duration of the licence—Ordinance No. 6 of 1910, s. 212.

The Chairman of the Municipal Council has power to limit the duration of a licence granted by him to a person, under section 212 of the Municipal Councils Ordinance, to carry on a business declared to be dangerous or offensive.

When a business is so declared to be dangerous or offensive, the prohibition contained in the section operates, notwithstanding the fact that the trade or business had been carried on before such declaration.

A PPEAL from a conviction by the Municipal Magistrate of Colombo.

H. V. Perera, for accused, appellant.

Hayley, K.C. (with *Roberts*), for complainant, respondent.

July 17, 1928. GARVIN J.—

The appellant was convicted of the offence of using certain premises for the purpose of curing plumbago without a licence in breach of section 212 of the Municipal Councils Ordinance, No. 6 of 1910, and a by-law made under the provision of that section declaring the business of storing and curing plumbago a "dangerous and/or offensive trade."

That the premises were so used is not disputed. They have been used as a plumbago store and curing yard from the year 1910. In the year 1916, when the business of storing and curing plumbago was declared a "dangerous and/or offensive" trade, the appellant applied for and obtained a licence to carry on the business for that year. He continued to apply for and obtain licences in each succeeding year till the year 1922, when the business of curing

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was discontinued. No licence was obtained for that year or thereafter permitting the curing of plumbago, but the appellant continued to take out annually a licence to use the premises as a store for plumbago.

It was discovered last year that the appellant had commenced to use the premises for curing and was doing so without a licence. In November, 1927, an application was made for a licence, but this was refused.

It is urged on behalf of the appellant—

- (a) That inasmuch as this business of storing and curing plumbago had been established by him prior to 1916 when businesses of that kind were for the first time declared to be dangerous or offensive, he was under no obligation to take out a licence ; and
- (b) That if the section did apply to such cases he had complied with the requirement by obtaining a licence, inasmuch as the Chairman who had power to grant a licence had no power to limit the duration of the licence.

The submission in support of the first of these points is that section 212 must not be construed so as to interfere with or injure a person's rights without compensation unless one is obliged so to construe it. Section 212 does not make provision for the payment of compensation in the case of a refusal to grant a licence. That circumstance is not however decisive of the question. The language of the section clearly and unambiguously prohibits the use without a licence of any place within the town for any of the purposes specified in that section and for any trades or businesses which may be declared by the Council by by-law to be a dangerous or offensive trade. Directly any trade or business is so declared a dangerous or offensive trade the prohibition operates and any person who thereafter uses the premises for that purpose becomes liable to a penalty. The case of *Butchers' Hide, Skin, & Wool Co., Ltd. v. Seacome*¹ is a decision which proceeds upon a totally different form of words in a different enactment.

As to the second of the two points, I am unable to assent to the contention that the first or any one of the annual licences subsequently obtained is a sufficient answer to the charge of using the place despite the prohibition. It is urged that the Chairman had no power to impose any limitation to the duration of the licence, but merely to grant a licence without any limitation to its duration, and that the words of the licence which so limit it should be ignored, and that once a licence is granted the Chairman has exhausted his power in that direction and thereafter may only suspend or revoke the licence for violation of the licence or any of the terms thereof without compensation and with compensation "if it shall appear to him necessary to do so" in any other case.

¹ (1913) L. R. 2, K. B. 401.

The section prohibits the use of a place for the purpose of a dangerous or offensive trade "except under a licence from the Chairman, who is hereby empowered, at his discretion from time to time, to grant such licences, and to impose such terms therein as to him shall seem expedient."

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These are words of wide import. The power to grant licences is in the discretion of the Chairman, who may exercise the power from time to time, imposing such terms as to him shall seem expedient.

The expression "from time to time" taken in conjunction with the power to impose such terms as to him shall appear expedient is in my judgment amply wide enough to authorize the Chairman to limit the duration of the licence, and I can see no justification for placing any narrower construction upon the section.

There is nothing in section 214 which militates against this view of the powers conferred on the Chairman by section 212.

The conviction being in my opinion well founded, this appeal is dismissed.

Appeal dismissed.
