1950 *Present :* **Gratiaen J.**

KARALINA, Appellant, *and* EXCISE INSPECTOR, MATARA, Respondent

S. C. 995—M. C. Matara, 19,479

Excise Ordinance—Search without warrant—Admissibility of evidence thus obtained—Cap. 42, section 36.

Evidence obtained without the authority of a search warrant and in contravention of the provisions of section 36 of the Excise Ordinance is not inadmissible for the purpose of securing a conviction under the Excise Ordinance.

APPEAL from a judgment of the Magistrate's Court, Matara.

Vernon Wijetunge, for accused appellant.

E. H. C. Jayetileke, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 4, 1950. GRATIAEN J.—

This is an appeal against a conviction under the Excise Ordinance. According to the evidence of Inspector Weerasinghe, whose veracity was not challenged by the defence, the accused's house was raided in her presence by a party of excise officers. In the kitchen they found a quantity of toddy which admittedly was far in excess of the amount permitted by law, and in the absence of some satisfactory explanation from the accused who was the chief occupant of the premises, the commission by her of an offence punishable under section 43 (*a*) of the Ordinance was clearly established.

The conviction has been attacked on the ground that the Inspector's evidence is legally inadmissible because the facts to which he testifies were discovered on an occasion when the accused's premises had been

illegally raided without the authority of a search warrant and in contravention of the provisions of section 36 of the Excise Ordinance. I shall assume—although I do not hold—that the raid was not authorized by law, but I really do not see how, in the present case, this circumstance can vitiate the conviction.

There is no provision in the Evidence Ordinance which renders a relevant fact (such as the detection of an offence) inadmissible merely because the fact has been discovered in the course of an illegal search, and as far as offences punishable under the Excise Ordinance are concerned, there is no other express statutory prohibition against the admission of such evidence. An abuse of official power may, of course, expose the offender to a claim for damages, to certain penal consequences, and, I trust, to stern disciplinary action; moreover in an appropriate case it would doubtless justify a Court of Law in viewing the evidence tendered with suspicion. But I do not see how, in the present state of the law, relevant evidence can be ruled out *ab initio* on the ground that it was obtained by improper means. This has been laid down in a long line of decisions of this Court. In *Bandarawela v. Carolis Appu*[1], Jayewardene A.J. held that there was no rule of law requiring the rejection of such evidence. In *S. I. Mirigama v. John Singho*[2] and in *Silva v. Menikrala*[3] Garvin J. held that " evidence which is legally admissible does not cease to be admissible merely because that evidence was discovered by an Excise Officer who did not comply with the requirements of section 36 of the Ordinance when searching premises without a warrant ". In *Almeida v. Mudalihamy*[4], Lyall-Grant J. took the same view, and so did Drieberg J. in *Attorney-General v. Harthewyek*[5]. These decisions were recently followed by Basnayake J. in *Peter Singho v. Inspector of Police, Veyangoda*[6].

The fallacy in the appellant's submission seems to lie in some confusion between the *admissibility* of the evidence tendered and the *weight* which should be attached to such evidence when its accuracy is disputed. Mr. Wijetunge claims that the decision in *Murin Perera v. Wijesinghe*[7] supports his contention. I do not agree. As I understand the judgment in that case, the conviction was quashed by my brother Nagalingam on a question of fact, and in *assessing the evidence for the prosecution*, the learned Judge very properly, if I may say so, took into consideration, apart from other circumstances, the fact that in his opinion the raid conducted by certain Excise officers was in contravention of section 36. It is correct that Nagalingam J. considered that the soundness of the views laid in three of the cases which I have cited " may have to be reconsidered in an appropriate case. " I do not understand his judgment to suggest, however, that the earlier rulings of this Court should not be regarded as binding authority unless they are over-ruled or set at nought by legislation.

I have not been able to discover any decisions of the English courts expressly touching this question but I find that in Scotland the Court

[1] *1926) 27 N. L. R. 401.*
[2] *(1926) 4 Times 71.*
[3] *(1928) 9 Law Recorder 78.*
[4] *(1929) 7 Times 54.*
[5] *(1932) 1 C. L. W. 280.*
[6] *(1949) 42 C. L. W. 15.*

of Sessions (Vide *Lawrie v. Muir, 53 Journal of Criminal Law 81*) adopted the view that " an irregularity in the obtaining of evidence does not necessarily make that evidence inadmissible ". Lord Cooper said " the law must strive to reconcile two highly important interests which are liable to come into conflict—(*a*) the interest of the citizen to be protected from illegal or irregular invasions of his liberties by the authorities, and (*b*) the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from Courts of law on any formal or technical ground". The full text of the judgment is not available to me, but the Scottish Courts now seem to favour the *admission* of evidence, however improperly obtained in cases of serious crime, and its *rejection* in cases of minor statutory offences. (Vide also *Mc Govern v. King's Advocate, 55 Journal of Criminal Law 303*). However that may be, it is important to remember that in this country questions affecting the admissibility of evidence are regulated by statute, and that it is for the legislature alone to decide whether in the interests of the community the admissibility of evidence improperly obtained should be curtailed. How the problem should be solved, it is not for me to determine. " On the one side ", said Mr. Justice Cardozo of America, " is the social need that crime should be suppressed. On the other, the social need that law shall not be flouted by the insolence of office. *There are dangers in any choice* ". (*People v. Before 242 New York Reports 13*).

In regard to the present appeal the evidence of the prosecuting officer is clearly admissible, and as it has not been challenged as untrue or unreliable the allegedly illegal entry and search have no bearing on the case. I dismiss the appeal.

Appeal dismissed.