

MACK v. TAMBI LEBBE et al.

P. C., Batticaloa, 10,106.

Petroleum Ordinance, No. 6 of 1887, ss. 14, 20, and 37—Possessing or keeping petroleum—Proof of existence of a place licensed for storage of petroleum—Burden of proof as to exceptions.

A plaint alleging that the defendants possessed in their premises petroleum exceeding 50 gallons, contrary to section 14 of the Ordinance No. 6 of 1887, and thus became punishable under section 20, is not so bad as to make it wholly defective.

“Possessing” connotes “keeping.”

The onus being on the accused to justify his keeping, it is not necessary under section 37 for a prosecutor to specify or negative in his plaint, or prove, any exception or exemption which does or does not accompany the description of offence.

In view of the rule made by the Governor in Council, that all petroleum landed in the Island should be carried at once to premises in respect of which a license has been granted, it is the duty of a person who desires to keep more than the permitted quantity, to provide himself with licensed premises, and it is not incumbent on the prosecutor to allege or prove the existence of a place which the Government can license for the storage of petroleum.

THE facts of the case appear in the judgment of the Supreme Court.

On appeal against a conviction, *Dornhorst* appeared for the accused appellants.

Dias, Crown Counsel, for complainant respondent.

21st February, 1895. WITHERS, J.—

The defendants on the 22nd day of December last were jointly charged, in a complaint laid before the Magistrate by a “local authority,” in the sense of the term used in Ordinance No. 6 of 1887, as follows:—

“That the defendants did on the 17th day of December, 1894, “at Chapel street, Batticaloa, within the jurisdiction of this Court, “possess in their premises a quantity of petroleum, to wit, kerosine “oil, exceeding 50 gallons, contrary to the provisions of the Ordinance No. 6 of 1887, clause 14, and thus became punishable under “section 20 of the said Ordinance.”

The defendants were accordingly summoned to appear and answer this charge.

On the 29th of December last the defendants appeared before the Magistrate, who read and explained to the parties charged the particulars of the plaint. Thereupon the defendants admitted that they had more than 50 gallons of oil in store. They were

accordingly sentenced to pay a nominal fine of 50 cents, the reason for their being dealt with so lightly being given in a judgment in a similar case tried and determined the same day.

From this sentence they appealed.

It was urged by Mr. Dornhorst that the appeal was taken on a point of law, the point being that the complaint contained no charge of any statutable or common law offence, and that a plea of guilty to an innocent act was no plea at all. The argument for the appellants was partly technical and partly meritorious—technical, in that “possessing” petroleum is no offence, but only “keeping” it, under the 14th section of the Code, and that it was not alleged that the prohibited quantity of petroleum was possessed without a license or in contravention of a license.

The next serious contention was that, before the appellants could be prosecuted under the 14th section of the Ordinance, it should be alleged and proved that there existed a place which the Government could license for the storage of petroleum, and he mentioned other conditions precedent indicated in the Ordinance, which it was for the prosecution to allege and prove, before the defendants could be called on to plead to the charge of the offence of keeping more than 50 gallons of petroleum without a license, or in breach of the terms of a license.

As to the technical point, I cannot rule that the defendants were prejudiced in any way by the language used in the plaint. Though “kept” would be a more apt word than “possess,” and would be the proper word to use, because it is the very word used in the section in question, I cannot say that it is so bad as to make the plaint wholly defective. The framers of the Ordinance laxly used the word “possess” for the word “keep” in the very next section, the 15th, and it may be fairly argued therefrom that one word connotes the other.

Then the 37th section enacts that the exception, &c., though accompanying the description of the offence, need not be specified in the plaint, or proved if specified in it. The onus is laid from the first on the accused to justify his keeping at a certain place more than the permitted quantity of petroleum.

On the more serious point taken, I am also against Mr. Dornhorst.

In the *Government Gazette* of the 4th March, 1887, the Governor in Council caused it to be proclaimed that this Ordinance was to come in force throughout the Colony from and after the 1st of July, 1887.

In the *Government Gazette* of the 9th August, 1887, certain rules were proclaimed by the Governor in Council (designated Petroleum Rules) to be observed throughout the Island, including the rule that "all petroleum landed in the Island should be "carried at once to to or to premises in "respect of which a license for the possession of petroleum has "been granted."

If a person wishes to keep more than the permitted quantity of petroleum for trade, it seems to me clear that he must take care to keep it in premises sufficiently safe for the purpose. He must put a place up for himself such as will satisfy the authority under the Ordinance who is competent to grant him a license for the keeping of more than 50 gallons of petroleum at a time. If he has no such premises, or neglects to put up such premises, he keeps the prohibited quantity at his risk.

The Ordinance expressly enacts in section 14 that no quantity of petroleum exceeding 50 gallons shall be kept by *any one* person (here the defendants are trading jointly as one person) or on the *same* premises (as here), except under a license from the local authority.

If no person has been appointed to issue licenses (see definition "local authority") the Government should be asked to appoint one.

The 20th section enacts that any person who in *contravention of this Ordinance* or of any rules made hereunder possesses petroleum shall be punished with imprisonment, simple or rigorous, or a fine within certain limits.

It is therefore an offence to contravene the Ordinance. The defendants in fact admit they have contravened the Ordinance. They were properly sentenced. The judgment is right.

It need hardly be said that Government would not demand a storage fee for petroleum kept by a person on his own premises.

