

## SAHIB v. WARLIANU.

1896.  
June 3.*P. C., Colombo, 41,659.**Tavern, being found in, after hours for closing—Ordinance No. 12 of 1891, s. 40.*

In section 40 of Ordinance No. 12 of 1891 the word "on" in the sentence, "If any person is found on such tavern, &c.," is a slip for "in;" and hence a person found immediately outside a tavern, and to whom arrack is passed on through a window, cannot be convicted, under that section, of being found on a tavern when the same is required to be closed.

THE evidence in this case showed that the accused was seen at about 8.50 P.M. standing at the side window, which was open at the time, of a tavern at Mutwal and drinking from a glass which was given him from inside the tavern through the window. The Police Magistrate charged him with being found on the premises of the tavern during the hours it was required to be closed, an offence punishable under section 40 of Ordinance No. 12 of 1891. and convicted him thereon.

The accused appealed.

*Pereira*, for accused appellant—The charge discloses no offence. The word "premises" in section 40 of the Ordinance does not mean the "premises of a tavern." It means premises licensed for the sale of intoxicating liquor as distinguished from a tavern. The immediately preceding section, section 39, clearly indicates the difference. There the words are, "all licensed taverns and all premises licensed for the sale of intoxicating liquor shall be closed," &c. Then, the word "on" in the third line of the section is clearly a mistake for "in;" and inasmuch as the accused was not found within the tavern, he could not be found guilty under that section.

*Cooke, C. C.*, for complainant, respondent.

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In my opinion this conviction cannot be supported. The appellants were convicted of "being found on the premises of tavern No. 8, in Modara street, during the hours at which a tavern is required by the Ordinance to be closed." Now there is no Ordinance which makes it an offence to be found on the premises of a tavern. Ordinance 12 of 1891, section 40, makes it an offence to be found "on a tavern." The words there "on such tavern or premises" are clearly a slip for *in* such tavern or *on* such premises, as will be seen on reading the following words of the

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same section, where the word *in* is all along used with respect to a tavern and *on* with respect to premises. It is easy to see how the mistake occurred. Section 40 of Ordinance No. 12 of 1891 is a re-enactment of section 38 of Ordinance No. 7 of 1873 and section 4 of Ordinance No. 22 of 1873. In that latter section the word tavern did not occur, but only the word premises; and in this particular instance the draftsman in inserting the word tavern omitted to use the appropriate preposition "in." So the charge must be amended to a charge of being found on tavern No. 8, omitting the words "the premises of." Then, holding as I do that the word "on" there means "in," does the evidence in the case support a charge that these men were found in this tavern? The evidence is that they were not in the tavern at all, in any sense of the word; they were outside it. The door was locked, but the liquor was passed out of a window. If the Magistrate had in his charge followed the words of the Ordinance, he could not have convicted the accused. This case illustrates—what I have had occasion to remark before—that it is important that the charge should be stated in the very words of the Ordinance.

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