

1913.

Present : Pereira J.

JAYAWARDENE v. APPUHAMY

366—P. C. Galle, 4,838.

*Cancellation of license to sell fermented toddy—Licensee should be informed.*

The cancellation of a license to sell fermented toddy must be communicated to the licensee by the Government Agent or some person duly authorized by him to act in that behalf, and the licensee should be informed of the precise date from which the license would be inoperative. In the absence of such communication, the licensee would commit no offence by continuing to sell.

THE facts appear from the judgment.

*H. A. Jayewardene and Arulanandam*, for accused, appellant.—There is no evidence on record to show that the license was in fact cancelled. Nor is there proof that the fact of the cancellation was duly communicated to the accused. The rent was re-sold as from May 1. The accused was, therefore, justified in selling till April 30, P 1 merely indicates an intention, and not a fact.

*Garvin, Acting S.-G.*, for respondent.—The documents produced establish clearly that the license was in fact cancelled. There is evidence that the accused was informed of the fact by the clerk in charge of the rent work. It has to be presumed that the clerk acted on behalf of the Government Agent in the ordinary course of his duties as rent clerk.

*Cur. adv. vult.*

July 16, 1913. PEREIRA J—

1913.

In this case the accused was convicted of keeping and exposing *Jayawardena v. Appuhamy* for sale toddy, without having a license for that purpose. The accused had in fact a license to sell fermented toddy, but it is said that it was cancelled. One Dahanaike, who describes himself as a "clerk in the Galle Kachcheri in charge of the rent work," was called, and his evidence as recorded shows that he swore to certain facts and produced certain documents, but omitted to swear positively to the most important fact, namely, that the accused's license was in fact cancelled. Assuming that it may be gathered from the documents produced that the license was cancelled as from April 28, what evidence is there that this cancellation was duly communicated to the accused? A cancellation of a license by the Government Agent in the privacy of his office cannot, of course, affect the accused, unless it is duly communicated to him. Was it so communicated? Document P 1 is an intimation to the accused that it was the intention of the Government Agent to cancel his license and to re-sell the rent at his risk, unless he paid a certain instalment of the rent on or before April 28, 1913; and the evidence of Dahanaike shows that the rent was re-sold to one L. A. de Silva as from May 1, 1913. Document D 1 purports to be a notice to the accused informing him that the license has been cancelled "in terms of my notice to you dated April 11, 1913," that is, document P 1. Neither the document P 1 nor the document D 1 could have given the accused any idea of the exact date on which, or as from which, the license was to be, or was in fact, cancelled. Anyway, there is no evidence that the document D 1 was served on the accused before the sale complained of. The Magistrate in his judgment says that on April 11 a notice was served on the accused informing him that the Government Agent would cancel his license and re-sell the rent on April 28. If the document referred to is P 1, I confess I can see in it no such information. The information given there is that it was the intention of the Government Agent to cancel the license and to re-sell the rent, unless the accused paid on or before April 28 the amount of the instalment overdue. As proof of notice to the accused, the Magistrate relies on the evidence of Dahanaike, who says: "I told him (*i.e.*, on April 29) of the re-sale and of the cancellation of the Udugama license." This is hardly due notice to the accused. There is nothing to show that in making the above statement to the accused Dahanaike had any right to act, or that he in fact professed to act, on behalf of the Government Agent. I had notice of this appeal given to the Attorney-General, but the Solicitor-General who appeared before me was not able to cite to me any authority in support of the Magistrate's decision.

I set aside the conviction and acquit the accused.

*Set aside.*