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*Present: De Sampayo J.*SEENITAMBY *v.* VALIPURAM.723—*P. C. Point Pedro, 5,403.*

*Opium—Sent by one person to another doing business with him—“ Dispose of ” —Excise Ordinance, No. 5 of 1910, s. 7 (2).*

The appellant sent by ss. “Lady McCallum” from Point Pedro to his son at Batticaloa, with whom he was doing business, opium concealed in bundles of tobacco.

*Held*, that accused had “disposed of” the opium within the meaning of section 7 (2), of Ordinance No. 5 of 1910.

**T**HE facts are set out in the judgment.

*Hayley* (with him *Naganathan*), for first accused, appellant.

*S. Obeyesekere, C. C.*, for respondent.

*Cur. adv. vult.*

August 30, 1916, DE SAMPAYO J.—

The appellant, Valipuram, has been convicted of the offence of having unlawfully disposed of 12 lb. of opium in breach of section 7 (2) of the Ordinance No. 5 of 1910, and has been sentenced to pay a fine of Rs. 1,000. The opium was found in a bundle of tobacco which, with seven other bundles, had been conveyed by the ss. “Lady McCallum” from Point Pedro to Batticaloa on December 22, 1915. According to the shipping order the eight bundles of tobacco were consigned by V. Arumugam to S. Kasipillai under the mark “S. K.” The shipping order was received by and presented at the Batticaloa Customs by Namasivayam, who is a son of the appellant. Namasivayam, who with his father, the appellant, would appear to carry on a business at Batticaloa, used to clear goods for Kasipillai there, and he professed ignorance of any opium being concealed in the bundle of tobacco. Kasipillai, however, repudiated the transaction altogether, and stated that he knew nothing of the tobacco being sent to his name at Batticaloa. V. Arumugam, whose name also appeared on the shipping order as consignor, similarly denied having sold the tobacco to Kasipillai, or having sent it to Batticaloa. The case for the prosecution is that the names of these two persons were utilized by the real consignor without their knowledge in order to cover the illegal transaction. Arumugam says that some days previous to December 22 he sold and delivered to the appellant a quantity of tobacco which was lying in a house at Point Pedro, and which the appellant made into bundles there. There is good reason for accepting the evidence

of Arumugam and the other witnesses who were called for the prosecution, and this evidence supports the finding of the Police Magistrate that it was the appellant who sent the tobacco by the "Lady McCallum," and that in this matter his son Namasivayam was acting in concert with him at Batticaloa.

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It is argued that, even on the assumption that the bundles of tobacco were so sent, there is no proof that the appellant had put the opium into one of them, and that some one on board the steamer might well have put it there. There are no circumstances indicating that the bundles of tobacco were interfered with on the way. On the contrary, the evidence is that they arrived at Batticaloa intact. It is for the appellant to explain, if he can, how the opium came to be among his goods; he has not done so, and the reasonable inference, I think, is that he was responsible for its introduction.

The more difficult question is whether, in the circumstances above disclosed, the appellant can be said to have "disposed of" the opium within the meaning of section 7 (2) of the Ordinance No. 5 of 1910. It is argued that, since his son Namasivayam does business with him, the sending of the opium to Namasivayam does not amount to transfer of the opium or of its possession. The expression "dispose of," generally speaking, no doubt conveys the idea of such a transfer. Even if that is the sense in which it is used in the above section of the Ordinance, there has, I think, been a transfer in this case. The appellant, as he denies the sending altogether, has, of course, nothing to say as to the opium being sent for himself or for the purpose of his business. When the fact is once established that he did send it, the Court is surely justified in drawing the conclusion, in the absence of any evidence to the contrary, that he intended to transfer the opium, or at least its possession, to Namasivayam. But I think that in the Ordinance the expression "dispose of" has a wider signification. The preamble of the Ordinance and the general character of its provisions show that it was intended to prohibit, except under specified conditions, the distribution of opium in any way, and this intention is aptly carried out by making it an offence to sell or "dispose of" opium. The substantive "disposal" will, perhaps, throw some light on its meaning. When we, for instance, speak of a thing being at a man's disposal, we do not mean merely that the man can sell or gift the thing, we mean also that he has entire control of it, so that he may take it or send it from place to place or do anything else with it as he may please. The same expression "sell or dispose of" occurs in section 14 (1) of Ordinance No. 10 of 1844, which prohibits licensed distillers and persons in the management of the business of licensed distillers from selling or disposing of spirits in a less quantity than 35 gallons at any one time. *Peris v. Surasinghe*<sup>1</sup> is a case in

<sup>1</sup> (1908) 12 N. L. R. 30.

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which the manager of an arrack distillery, who had himself taken and removed a bottle of arrack from the distillery, and stated in defence that the arrack was for his own consumption, was charged under the above section of the Ordinance No. 10 of 1844 with having disposed of arrack in less quantity than 35 gallons. His conviction was affirmed in appeal. Hutchinson C.J., after referring to the stringent provisions of the Ordinance as to the deposit of spirits in stores and as to the removal of the same without permits, observed as follows: "When a man takes liquor from his store and removes it or gets it removed to some other place, whatever the purpose may be to which he applies it, whether for sale or for his own consumption or for that of his friends, he 'disposes of it' in the ordinary sense of the words." These observations are quite applicable to the nature of the provisions in the Opium Ordinance and to the meaning of the expression "dispose of" as used therein, and I think that that decision is an authority for holding that the appellant "disposed of" the opium by sending it to his son Namasivayam at Batticaloa.

For these reasons I am of opinion that the conviction of the appellant is right, and the appeal is therefore dismissed.

*Appeal dismissed.*

