

1959

*Present : T. S. Fernando, J.*

AGONIS PERERA, Appellant, and W. D. A. GANEGAMA  
(S. I. Police), Respondent

*S. C. 393—M. C. Colombo, 9294/C*

*Excise Ordinance—Charge of possessing unlawfully manufactured liquor—Certificates of Assistant Government Analyst and Deputy Government Analyst—Evidential value thereof—Excise (Amendment) Act, No. 36 of 1957, s. 3.*

The expression "Government Analyst" in section 3 of the Excise (Amendment) Act, No. 36 of 1957, does not include the deputy or any of the assistants of the Government Analyst. Their certificates, therefore, when produced in a prosecution for possession of unlawfully manufactured liquor, do not have the presumptive evidential value which is given to the certificate of the Government Analyst.

**A**PPPEAL from a judgment of the Magistrate's Court, Colombo.

*N. R. M. Daluwatte*, for the accused-appellant.

*P. Nagendran*, Crown Counsel, for the Attorney-General.

November 24, 1959. T. S. FERNANDO, J.—

The Excise (Amendment) Act, No. 36 of 1957—section 3—provides that the production of a certificate of *the Government Analyst* that he is satisfied that any liquor analysed by him is not liquor of a description that could have been manufactured under the authority of a licence issued under the Excise Ordinance and is not liquor that could have been manufactured in a Government distillery raises a rebuttable presumption that the liquor so analysed is unlawfully manufactured.

In order to prove that the liquor possession of which was brought home to the appellant was unlawfully manufactured the prosecutor relied upon the statutory presumption referred to above, but unfortunately for him he produced not a certificate of *the Government Analyst* but a report of two persons, viz., *an Assistant Government Analyst* and *the Deputy Government Analyst*. Even assuming that the report is equivalent to a certificate, it must be noted that the expression "Government Analyst" is not defined either in the act or in the Excise Ordinance as including the deputy or any of the assistants of the Government Analyst. The expression must receive its ordinary meaning. If the legislature intended the certificate of an officer other than the Government Analyst himself to be sufficient to raise the presumption, such an intention should, in my opinion, have found specific expression in the statute itself. I can discover nothing even in the Interpretation Ordinance that can avail the prosecutor in the circumstances of this case.

The conviction and sentence are set aside and the appellant is acquitted.

*Appeal allowed.*

