

Present : Ennis J. and Jayewardene A.J.

DE KRETZER v. PERERA.

709—P. C. Panadure, 82,877.

Excise licence—Delegation of authority—Licence signed by Office Assistant to Government Agent—Ordinance No. 8 of 1912, s. 7 (h) and s. 57.

An Assistant Government Agent has power to delegate to an Office Assistant his authority to sign licences under the Excise Ordinance.

CASE referred to a Bench of two Judges on the question whether a licence to sell liquor issued under the Excise Ordinance and signed by the Office Assistant to the Government Agent is valid.

H. T. Perera, for accused, appellant.

Obeyesekere, C.C., for respondent.

February 5, 1925. ENNIS J.—

In this case a point under the Excise Ordinance has been referred to a Court of two Judges. The point is whether a licence signed by the Office Assistant to the Government Agent is good. Section 18 of the Excise Ordinance, No. 8 of 1912, provides that the Governor may grant the privilege of selling liquor, and it says that no grantee of any privilege shall exercise the privilege until he has received a licence in that behalf from the Government Agent. Section 24 says that every licence shall be in the form and contain such particulars as the Governor may direct. No direction has been given as to the form of the licence. Section 57 provides that except when it is otherwise expressly provided by the Ordinance, the Assistant Government Agent of the district shall exercise within his district all the powers of a Government Agent, subject to the direction and control of the Government Agent; and section 7 (h) provides that the Governor may by a notification permit the delegation by Government Agents of any powers conferred by this Ordinance. In the *Gazette* of November 5, 1920, there was a notification by the Governor giving permission to Government Agents to delegate to their Office Assistants their powers of signing licences under the Excise Ordinance. That notification seems to answer fully the point reserved for two Judges. The licence in the present case has been signed by an Office Assistant for the Assistant Government Agent. The Assistant Government Agent has the powers of the Government Agent under section 57, and that will

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include the power to delegate specified in section 7 (h) and notified in the *Gazette* of November 5, 1920. A certified copy of the delegation under the hand of the Assistant Government Agent has been shown to us under which the Office Assistant, Mr. Goonewardena, who signed the condition as to the amount of liquor to be kept by the tavern keeper, was authorized to act.

I would answer the question referred that the licence is good.

JAYEWARDENE A.J.—

I agree that the questions referred to a Bench of two Judges should be answered in the sense in which my brother has answered them. At the same time it is unfortunate that the *Gazette* now produced, and the delegation by the Assistant Government Agent of the right to sign licences to his Office Assistant, were not produced in the lower Court, because the question was raised with regard to the authority of the Office Assistant to sign Excise licences. I think Excise Inspectors and Officers should be fully acquainted with the notifications issued under the Excise Ordinance, and if that is done a great deal of time will be saved in the argument of appeals arising out of the Excise Ordinance. For the final disposal of the appeal, there is one other matter to be dealt with. It was contended for the appellant that the order requiring him to keep a certain quantity of arrack under condition 14 of the general conditions is also invalid, as that order too was signed not by the Government Agent or Assistant Government Agent, but by an Office Assistant. This point was not raised in the lower Court, and I am, therefore, unable to allow it to be discussed. It may be that as we have discovered in this case, there may be notifications and delegations which might cover the point.

The appeal must, therefore, be dismissed.

Appeal dismissed.