

PERERA v. LOUSHAMY *et al.*

*P. C., Matara, 861.*

1898.

January 27.

*Ordinance No. 10 of 1844, s. 32—Unlawful possession of arrack—Search without warrant.*

In a prosecution under section 32 of Ordinance No. 10 of 1844 for unlawful possession of arrack, the question whether the accused's house was properly entered for the purpose of searching for arrack is immaterial to the question involved in the case.

IN this case two persons were charged under section 32 of Ordinance No. 10 of 1844 with being in unlawful possession of a certain quantity of arrack. At the trial, the renter deposed that he went with the Vidane Arachchi to the house of the accused; that he asked the second accused, who was the wife of the first accused, to open the door and let them in to search the house; that she did so; and that they found in the house a quantity of arrack, which they seized and took away. In cross-examination he stated that he had no warrant to enter the house. His counsel then objected to the whole proceeding, on the ground that the seizure of the arrack was unlawful in the absence of a search warrant to enter the house. The Magistrate dismissed the case.

The Attorney-General appealed.

*Sampayo*, for appellant.

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January 27. 27th January, 1898. BONSER, C.J.—

I think this application must succeed. The question whether the house was properly entered or not is immaterial to the question which the Magistrate had to decide, which was whether the accused were in unlawful possession of the arrack or not.

The case must therefore go back to be heard and dealt with according to law.

