

PIERIS v. LIVERA.

P. C., Colombo, 33,867.

1894.
*December 13
and 20.*

Arrack flavoured by drugs and spices—Ordinance No. 10 of 1844, s. 37, and Ordinance No. 13 1891, s. 10—Removal without permit.

The removal, without permit, of arrack which has been so highly impregnated or flavoured by drugs or spices that a distillation did not deprive the compound of their taste and flavour, and which was not proved as useful for medicinal purposes only, is punishable under Ordinance No. 13 of 1891, section 10, and Ordinance No. 10 of 1844, section 37.

THE accused in this case was convicted of the offence of removing $7\frac{1}{2}$ gallons of arrack from one place to another without a permit, in breach of section 10 of Ordinance No. 13 of 1891 and section 37 of Ordinance No. 10 of 1844.

The defence set up was that no permit was required for medicated arrack.

The Police Magistrate's judgment was as follows :—

“ In the present case the analysis proves that the compound in question was strong arrack in which various bitter and aromatic drugs had been steeped. There was no chemical change in the arrack, and Dr. Fernando says the mixture is perfectly fit to drink. It would apparently fall more under the description of

1894. "liquor mentioned in P. C., Kalutara, 62,334 (3 S. C. C. 44, 45),
December 13 "which was held to require a permit To allow such a
and 20. "compound to escape the provisions of the Ordinance regulating
"the removal of arrack would have the effect of spreading
"drunkenness widely among the people."

He sentenced the accused to a fine of Rs. 50, and ordered the confiscation of the arrack seized.

On appeal, *Wendt* appeared for the accused, and *Dornhorst* for the complainant (the peon of the arrack farm of Colombo).

Cur. adv. vult.

The conviction and sentence were affirmed in the following judgment of the Supreme Court :—

20th December, 1894. BROWNE, A.J.—

Accepting as true the evidence of the compounder of the liquor seized in this case, I find it is prepared by putting ordinary arrack distilled from the produce of the cocoanut palm, and purchased from the renter's godown, into a pot, steeping therein sixty kinds of herb for fifteen days, then distilling off the contents; and next infusing in the re-distilled product certain powders, as gallnut, for seven days, and then straining them off. The result thereof, according to the compounder, is that the original quantity in the pot is reduced by one-half, and is much stronger; and according to the public analyst that it was stronger than the best arrack, the percentages being, pure spirit 44·5 per cent., water 54·5 per cent., drugs about 1 per cent., the drugs being held in solution. No chemical change or change of alcoholic power was effected in the arrack by the introduction of the drugs, which could be separated only by distillation.

The liquor, however, did not taste or smell like arrack, but like a bitter alcoholic preparation. He re-distilled it, and it then smelt distinctly of arrack, and tasted of arrack flavoured with aromatic drugs, which were volatile, and were distilled with the liquor and not separated by this re-distillation, but could have been separated by repeated distillation.

This evidence has failed to show me that this compound was new, and substantially different from arrack. It is not shown that in its preparation there were other substances, the solution whereof or the distillation wherefrom would add to the original arrack consisting of so much spirit and so much water, such other ingredients as would make a new compound so essentially different.

The result was only arrack so highly impregnated or flavoured by the drugs or spices, which in the inception of this process had been steeped in it, and blent with it by distillation of the arrack after their infusion, that one re-distillation thereafter did not deprive the compound of their taste and flavour.

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There is no proof that the compound was noxious, or even unpalatable, or could be used for medicinal purposes only, and the case therefore does not fall within such possible exceptions as were made in *3 S. C. C. 73*.

Affirmed.

