

1946

Present : Howard C.J.

SIMON, Appellant, *and* POLICE, Respondent.

376—*M. C. Colombo, 69,462.*

Prosecution for illicit possession of arrack—Accused's possession on behalf of another who has permit—Liability of accused—Excise Ordinance, s. 16.

Mere physical possession of an excisable article on behalf of someone else who has authority to possess it is not an offence.

A PPEAL against a conviction from the Magistrate's Court, Colombo.

J. A. L. Cooray, for the accused, appellant.

V. T. Thamotheram, C.C., for the Attorney-General.

June 17, 1946. HOWARD C.J.—

In my opinion the conviction in this case cannot be supported. The accused was charged with having in his possession without a permit from the proper authority 56 drams of arrack which was 40 drams in excess of the prescribed quantity, in breach of section 16 of the Excise Ordinance. The evidence established, and the Magistrate has accepted that evidence, that the accused was merely keeping the arrack for the benefit of a man called Gunaratne and that this arrack was intended for the use of Gunaratne. Gunaratne gave evidence and produced a permit for the arrack in question. In these circumstances it cannot be said that the accused had exclusive possession of the arrack or any real possession, apart from physical possession on behalf of some one else, at all. The conviction is therefore set aside.

Appeal allowed.
