FERNANDO *v.* MIRANDO.

1901.
December 11.

P. C., Negombo, 29,300.

Arrack Ordinance, No. 10 of 1844, ss. 28, 32—Permit to remove and consume arrack—Form E in s. 33.

In a prosecution under section 32 of the Arrack Ordinance for being in unlawful possession of arrack, it is no defence to justify possession under a permit which is not in accordance with the Form E mentioned in section 33, and does not set out either the true name of the person authorized to remove the arrack, or the name of the place to which it was intended to be removed.

THE facts of the case appear in the following judgment of the Chief Justice.

Bawa, for accused, appellant.

De Mel, for respondent.

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20th December, 1901. BONSER, C.J.—

This is an appeal from a conviction under section 32 of Ordinance No. 10 of 1844, for being in unlawful possession of three gallons and two gills of arrack. The appellant is the headman of a village called Etukal.

It appears that a number of persons in the village were minded to carry on a public lottery lasting for several days, which they allege—but, I hope, not truly—was for the purpose of the village church. In order, apparently, to induce the people to risk their money, the committee treated them to arrack, and on the 20th of September a man called Siman Croos, said to have been one of the Committee, sent to the tavern at Negombo for four gallons of arrack for free distribution among the persons attending the lottery. He says he did not wish his name to appear as the purchaser—no doubt, because he was ashamed—and so he sent a carter of his, Abilino, and told Abilino to represent him and take out the permit required for its removal in his own name. The permit was accordingly issued in these terms:—"This is to "certify that Abilino has my permission to remove four gallons of "arrack in three casks from tavern No. 2, Udayar, to Palangature "within four hours, and there to consume the same within forty-"eight hours."

This permit is not in accordance with the facts. It was never intended to take the arrack to Palangature, which was a mile distant from Etukal. It was taken to Siman Croos' house, and thence removed to the house of the appellant and delivered to him.

It is alleged that he was put in charge of this, and he was to distribute it amongst the populace. A quantity of it had been drunk, when the arrack renter's peon appeared on the scene and tried to seize the arrack, which the appellant refused to allow him to do. The appellant in his own evidence admitted that he had the arrack on that day, and it seems to me that he could not dispute the fact.

Now, according to the Ordinance, the possession of arrack is an offence, unless the possessor can bring himself under certain exceptions set out in section 32. One of these, under which the appellant sought to bring himself, is, that the spirit "shall have "been purchased from the licensed retail dealer of the district "within which it shall be possessed; and provided further, that the "possessor of any such spirit shall, when necessary have taken "out the certificate or certificates required by the 28th clause "of the Ordinance." Now, it is clear that he was not the

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purchaser, and even if he was, the required certificate had not been taken out in accordance with the Ordinance. The permit, as I said, varied in certain material particulars from the form required by the Ordinance. The Ordinance requires the real purchaser's name to appear, as well as the name of the person authorized to remove it, and also the names of the places from and to which the arrack is to be removed. Now, this permit did not contain the name of the owner, nor the name of the place to which it was intended to be removed. It seems to me, therefore, that the permit can be of no protection to any person. The conviction must, therefore, be affirmed.

All throughout I have assumed that the evidence given for the defence is true, although the Magistrate was not inclined to believe it. I think that, even if that evidence be believed, the conviction is right.