

Present : Schneider A.J.

1921.

SIRIWARDENE *v.* FERNANDO.

240—*P. C. Chilaw, 10,300.*

Excise Ordinance—Four persons carrying eight bottles of arrack in a cart.

Four persons had each bought two bottles of arrack and carried them in a cart.

Held, that no offence was committed.

“ It is permitted by the law for two persons to be in possession of four bottles of arrack provided the quantities are kept separate.”

THE facts appear from the judgment.

— *R. L. Pereira*, for first accused, appellant.

M. W. H. de Silva, C.C., for respondent.

1921.

March 14, 1921. SCHNEIDER A.J.—

*Sirwardene
v. Fernando*

The appellant in this case and one Marsilinu Fernando were charged as first and second accused as follows :—

“ That on December 21, 1920, they did possess thirty drams of arrack, an excisable article, without a permit, in excess of the quantity provided by Excise Notification No. 5 read with sections 4 and 16 of Ordinance No. 8 of 1912 ; that at the same time and place they did transport the arrack, without a permit, in breach of Excise Notification No. 7 read with section 12 of the same Ordinance.”

The learned Magistrate convicted the appellant with being in possession without a permit of thirty drams of arrack, a quantity in excess of that prescribed by Excise Notification No. 5 read with sections 4 and 16 of Ordinance No. 8 of 1912. He discharged the second accused.

The case for the prosecution is that the two persons accused in this case and two others were detected carrying in a cart eight bottles of arrack, and when questioned by the Excise Inspector who stopped the cart, each of the four persons claimed to have bought and to be removing two out of the eight bottles of arrack. The Excise Inspector himself admits that this claim was put forward to him the moment he stopped the cart. If the claim made by these persons be accepted, it is obvious that none of these persons is guilty of being in possession of or of transporting a quantity of arrack in excess of that permitted by the law, because the notification relating to the matter permits the possession and transport without a license at one time by a single person of sixteen drams, which it is admitted in appeal is equivalent to two bottles of the size used in this Island. Therefore, it is permitted by the law for two persons to be in possession of four bottles of arrack provided the quantities are kept separate. The learned Magistrate discharged the second accused, giving as his reason that the charge of transporting need not be pressed. He evidently, therefore, regarded the second accused as simply a carter, who was driving the cart in which the arrack was discovered. To my mind the evidence establishes beyond any doubt that the thirty drams or four bottles which were produced in this case and formed the subject-matter of the charge were four bottles of arrack which had been purchased by the appellant and Simon Peries. I am unable to understand how the charge came to be framed, charging two persons with being in possession of thirty drams and thereby committing an offence. It is obvious from the evidence that the prosecution is bound to fail. There is no reason why the evidence for the defence should not be accepted that the four bottles had been purchased by the appellant and Simon Peries.

I therefore set aside the conviction and acquit the accused.

Set aside.