SAMARAKOON *v.* CROOS *et al.*

1897.
March 30.

P. C., Chilaw, 11,332.

Selling arrack contrary to tenor of license—Sale at a different place—Non-liability of licensee—Liability of sub-renter—Section 9 of Ordinance No. 13 of 1891.

The accused, who were the purchasers of the monopoly of retailing arrack in the Chilaw District for the year 1896, were charged with "having caused to be sold on their account by retail "at Rajakadaluwa, instead of at Tingal-oya near the bridge, "contrary to the tenor of the license bearing No. 29 of 1st July, "1896, and thereby having committed an offence punishable under "section 9 of sub-section 3 of Ordinance No. 13 of 1891."

The accused proved that they had sold this particular tavern to a third party, and that they were not aware of this alleged infringement of the license.

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Held, that the accuseds could not be convicted of the offence with which they were charged.

BONSER, C.J.—The principle appears to be that if a licensed person delegates his authority to another and places him in complete charge of the premises, he substitutes that person for himself, and is liable for any breach of the licensing laws committed by that person on the premises. It is unreasonable to stretch the law further and make him responsible for anything which the delegated person may do in any other part of the Island.

THE facts are set forth in the judgment.

Dornhorst, for appellants.

Dias, C.C., for respondent.

30th March, 1897. BONSER, C.J.—

This is a reasonably clear case, and I need not reserve my judgment. The appellants are persons who purchased in 1896 the monopoly of retailing arrack in the Chilaw District of the North-Western Province, and they are known as "the licensed "retail dealers." The practice appears to be for the Government Agent to put up for sale all the arrack taverns in a district at once, and to sell the monopoly of retailing arrack in that district to the highest bidder. A separate license is granted in respect of each tavern. The appellants received a license to retail arrack in the form C given in Schedule IV. to Ordinance No. 13 of 1891. Afterwards, in accordance with what I am told is the custom, the appellant put up the right to sell arrack at this tavern to public auction, and it was bought by two men called Fernando, and the appellant thereupon handed over the license to the purchasers and signed a memorandum at the foot thereof in the following terms :—"In conformity with the foregoing license in our favour, "we, John de Croos and C. M. de Croos, licensed retail dealers, "hereby authorize Davith Fernando and Peter Fernando to sell by "retail for us and for our benefit at the place aforesaid * * * * * " It appears that the Fernandos were not satisfied with the amount of business they could do at this tavern at Tingal-oya. They therefore proceeded to open an unauthorized tavern at a place called Rajakadaluwa, in the neighbourhood of some cocoanut plantations, where they expected to get more customers. There is no evidence that this was done with the knowledge of the appellants. The appellants having sold the license, seemed to have washed their hands of the matter, and taken no further interest in it. However, a complaint was lodged against the appellants in the Police Court of Chilaw that they "did on 10th "day of December, 1896, and on the following days, cause to be

"sold on their account by retail at Rajakadaluwa, instead of at "Tingal-oya near the bridge, contrary to the tenor of the license "bearing No. 29 of 1st July, 1896, and thereby committed an offence "punishable under section 9 of sub-section 3 of Ordinance No. 13 "of 1891." It will be noticed that it is not stated in this complaint what it is the appellants sold by retail—whether arrack, rum, gin, milk, or potatoes—it might be anything. However, I presume the intention was to charge them with selling arrack. The section referred to in the plaint forbids any person to sell by retail arrack without having first obtained a license for that purpose, or unless he is acting for, and by the authority or for the benefit of, and in conformity with, the license granted to the retail dealer, *i.e.*, the monopolist. Now, that prohibition is not directed to the licensed retail dealer. The licensed retail dealer has a license from the Government Agent, and a licensed retail dealer cannot be said to act for himself. The prohibition is, therefore, directed to somebody else. Then, sub-section 3 provides a penalty as the sanction of that prohibition. It says that any person who shall sell or permit to be sold on his account by retail arrack without the Government Agent's license or contrary to the tenor thereof shall be guilty of an offence and punished as therein mentioned. Now, it was argued that the licensed retail dealer must be responsible for the acts of the persons who actually manage the tavern, and to whom he has delegated his authority; that the appellants had delegated their authority to the Fernandos, and, therefore, they must be criminally responsible for their act in opening this tavern at Rajakadaluwa, and the case of *Van Haght* v. *Fernando* (*2 N. L. R. p. 249*) was cited as an authority for that proposition. In my opinion this case is no authority for a proposition so wide as that which the prosecution now seeks to establish. That case merely decided that a licensee of a tavern was liable for breaches of the conditions of his license committed on the tavern premises. The principle appears to be that if a licensed person delegates his authority to another and places him in complete charge of the premises, he substitutes that person for himself, and is liable for any breach of the licensing laws committed by that person on the premises. It would be unreasonable to stretch the law further, and make him responsible for anything which the delegated person may do in any other part of the Island. This seems to me to be very like the case where the owner of a London public house puts a manager in entire charge of it. He cannot by so doing divest himself of responsibility for any breaches of the licensing laws which take place in that public house; but if the manager were, without the knowledge of his owner, to establish

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an illicit still in some other part of London, or to open an unlicensed booth for the sale of liquor at a racecourse, I cannot conceive that the owner would be held liable for that. No English case has been cited which goes that length, and I decline to extend the doctrine of constructive liability so far as that. I do not think the object of the Ordinance will be defeated by limiting the doctrine of constructive liability in the way I have mentioned. For these reasons, I am of opinion that the appellants were wrongly convicted, and that the conviction should be quashed and the appellants acquitted.