

VAN HAGT v. FERNANDO.

P. C., Ratnapura, 12,325.

1896.
October 5
and 20.

Sale of arrack in tavern contrary to terms of license—Liability of licensee therefor—Ordinance No. 13 of 1891, s. 9, sub-section 3.

The licensee of a tavern is liable if any arrack is sold in it, either by those employed by him or those to whom he has sub-sold the tavern, at a greater or less price than the license directs.

THE accused, the licensee of a tavern, was charged with and convicted of having "caused or permitted" to be sold in his tavern on his account arrack contrary to the tenor of the license in his favour, in breach of sub-section 3 of section 9 of Ordinance No. 13 of 1891. The evidence showed that the accused had sold his rights under the license to one Pedro Peris, and that arrack was sold in the tavern by a servant of Pedro Peris contrary to the terms of the license.

In appeal, *Dornhorst* and *Jayewardene*, for appellant; *Wendt* and *Seneviratne*, for respondent.

20th October, 1896. LAWRIE, J.—

I am of opinion that the licensee of a tavern is liable if any arrack be sold within that tavern at a greater or less price than the license directs. He is responsible if those whom he employs, or those on whom he devolves the duty or profit of selling arrack in the tavern, infringe and disregard the plain directions of the license.

In the Matter of MAY OLIVE DAISY FERNANDO, a Minor.

D. C., Colombo, 144.

1896.
October 29.

Jurisdiction—Appointment of curator to estate of minor not domiciled in the Colony—Ordinance No. 1 of 1889, s. 71—Civil Procedure Code, chapter XL.

A District Court has no jurisdiction to appoint a curator of the estate of a minor who is not domiciled in this Colony or resident within it.

THE facts of the case appear in the judgment.

Van Langenberg, for appellant.

29th October, 1896. BONSER, C.J.—

This is an application by the mother of a minor to have a curator of the minor's property appointed by the District Court of Colombo.

1896.
 October 29.
 BONSER, C.J.

It appears that the infant is entitled under the will of her great grandfather to an aliquot share of the net rents and profits of some real property in Colombo. The father was at the time of his death domiciled in England, and was carrying on business as a chemist in London. He married an English lady, and whether or not his original domicile was Ceylon, there is no doubt that it was English at the time of his death. The domicile of the child is also English.

We are asked to make an order under section 71 of Ordinance No. 1 of 1889, which provides that "every district court shall have the care and custody of the persons and estates of all idiots and lunatics and others of insane and non-sane mind resident within its district, with full power to appoint guardians and curators of all such persons and their estates, and to make order for the maintenance of such persons and the proper management of their estates," and so on, and then it goes on to say, "also in like manner, and with the same powers, the care of the persons of minors and wards, and the charge of their property within its district shall be subject to the jurisdiction of the district court."

It appears that in the Charter of 1833, which first established District Courts, no provision was made for minors.

The first legislative enactment which referred to them was the Ordinance No. 11 of 1868, of which Ordinance this Ordinance (No. 1 of 1889) is a reproduction.

It was argued that the words "within its district" must refer to the word "property," which immediately precedes them, and not to the words "minors and wards."

It was argued that whenever property belonging to a minor was found within the jurisdiction of a District Court that District Court has power to appoint a curator of it. But it seems to me very doubtful whether that is the true construction of that section. When we look to the Civil Procedure Code, which was enacted for the purpose of giving effect to the jurisdiction created by Ordinance No. 1 of 1889, we find that in chapter XL., which deals with these applications, it is assumed throughout that the minor is to be resident within the district of the Court to which the application is made. It would seem, therefore, that the Legislature has itself interpreted section 71 in a sense adverse to the contention of Mr. Van Langenberg. That being so, I am of opinion that the District Court of Colombo had not jurisdiction to appoint a curator of the estate of the minor who was not domiciled in this Colony or resident within it.

It may be that it is unfortunate that the District Court has not this power, but the District Court is a creature of statute and has no power other than that which the statute gives.

1896.
October 29.
BONSER, C.J.

With regard to the merits, I am not satisfied that if the Court had jurisdiction this was a case in which the Court ought to have exercised its power.

LAWRIE, J., agreed.
