

1896.
June 17 and 22

WYTHILINGAM v. SADRIS *et al.*

P. C., Colombo, 42,386.

Tavern—Opening it or keeping it open after hours—Liability of each salesman—Defence open to him—Fine.

Each salesman who is found selling arrack in an open tavern after 8 P.M. is guilty, under section 39 of Ordinance No. 12 of 1891, of having opened or kept open the tavern after hours, and is liable to a fine of Rs. 50. It is, however, open to the salesmen, in order to exonerate themselves, to show that the tavern was kept open by order of a master, and that they were only servants.

THE facts of the case sufficiently appear in the judgment.

Pereira, for accused, appellants.

Cur. adv. vult.

22nd June, 1896. LAWRIE, C.J.—

Three salesmen were found selling arrack in an open tavern after 8 P.M. Each of the three has been found guilty of having opened or having kept open the tavern after hours, and each has been fined the maximum penalty of Rs. 50.

It is contended that the keeper of the tavern is the only person liable; that the maximum penalty is Rs. 50; and that if all these accused be guilty the fine of Rs. 50 should be divided among them. It is not proved that all or any one of them was in charge of the tavern; all that is proved is that they were in it selling arrack. They seem to be of equal authority. It has been presumed by the Magistrate (and I think the presumption was right) that it was in their power to open or to close, and that they agreed to open or to keep open the tavern after the hour fixed for closing.

If so, each is liable in the full penalty: the Ordinance says "every person who," &c.

It was for the accused to show at the trial that the tavern was kept open by order of a master, and that they were only servants.

They made no statements and gave no evidence to explain their position.

The conviction and sentence are affirmed.
