JANSZ *v.* GREGORIS.

1901.
February 18.

P. C., Kurunegala, 11,072.

Arrack Ordinance—Retail sale of arrack contrary to license—Ordinance No. 13 of 1891, s. 9—"Sell arrack at the price of —— and at no other price whatsoever"—Intention of Legislature—Terms of the license—Evidence of sale—Value of evidence of accomplice—Criminal Procedure Code, s. 306—Drawing up of judgments.

The form of license issuable under the Ordinance No. 13 of 1891 imposes the condition that the licensee "shall sell arrack and rum at the "price of —— per imperial gallon, and in proportion for any less quan- "tity and at no other price whatsoever."

Semble, per BONSER, C.J.—(1) These words fix the maximum price only, and were inserted in the Ordinance not out of regard for the interests of the community with a view to discourage the sale of intoxicating liquor, but because it was felt to be the duty of the Government to fix the price of commodities for the benefit of the consumer.

(2) The licensee is therefore at liberty to sell the arrack in his possession at any price less than the maximum, or give it away for nothing.

(3) The evidence of a man who swears that he bought arrack for a price below the maximum actually fixed by the license must be treated as the evidence of an accomplice, because it requires two persons to buy and sell.

(4) When the whole case for the prosecution rests upon the evidence of such an accomplice, it should not be relied on unless he is corroborated in some material particulars, although in strict law a conviction founded upon his evidence only is good.

Held, that a judgment drawn up under section 306 of the Criminal Procedure Code should specify the offence, the section of the law under which the conviction was had, the name of the accused, and the date of the conviction.

THIS was a prosecution under section 9 of the Ordinance No. 13 of 1891, in that the accused, being duly licensed by the Government Agent of the North-Western Province to sell arrack by retail from 1st January, 1900, to 31st December, 1900, inclusive, at tavern No. 1, situated at Kurunegala, on condition that he shall sell arrack at the price of Rs. 4.50 per imperial gallon, and in proportion for any less quantity, and at no other price whatsoever, did on the 28th December, 1900, at tavern No. 1 aforesaid, contrary to the tenour of such license, sell or cause to be sold on his account five imperial gallons of arrack to one Rangkira, and two imperial gallons to one Undia, and one imperial gallon to one Juanis, at the price of Rs. 3 per imperial gallon.

The accused was the person put in charge of the tavern by the renters.

The license granted by the Government Agent to the renter to retail arrack and rum ran as follows:—

"This is to certify that I. F. C. Fisher, Government Agent for the North-Western Province, do hereby license Mr. T. H. A. de

1901. *February 18.*

Soysa, Arrack Renter of Seven Korales for 1898 to 1900, to sell arrack and rum by retail from the 1st January, 1900, to the 31st December, 1900, inclusive, at the tavern No. 1, situated at Kurunegala, and at no other place, on condition that the said Mr. T. H. A. de Soysa *shall sell* arrack and rum *at a price not less than Rs. 4.50* per imperial gallon, and a proportionate price for any quantity less than a gallon."

The renter authorized by writing the accused to sell arrack and rum in terms of this license, which was not in accordance with the form of license given in the Ordinance No. 13 of 1891, where the condition was expressed to be that " the said ———— " shall sell arrack and rum at the price of ———— per imperial " gallon, and in proportion for any less quantity, *and at no other " price whatsoever.*"

The Police Magistrate found the accused guilty and sentenced him to pay a fine of Rs. 50, or to undergo three months' rigorous imprisonment in respect of each of the sales alleged in the charge.

The accused appealed.

No appearance for appellant.

The Chief Justice having expressed a desire to hear the Solicitor-General on behalf of the Crown,—

Rámanáthan, S.-G., appeared for the respondent.—It must be admitted that the license given by the Government Agent was not exactly in terms of the Form C given in Schedule IV. of the Ordinance. According to the Ordinance, arrack and rum should not be sold for any other price than that fixed by the Government Agent. [BONSER, C.J.—Was not the price fixed solely for the benefit of the consumer? What does it matter to the Government if the renter sold it for a lower price?] It matters much, for if arrack was sold cheap there would be too free a use of this intoxicating article, and drunkenness and crime would increase. Therefore the distillation and sale of arrack have always been Government monopolies, and it is necessary for the sake of morality and good order that the sale of such dangerous drinks should not be for a price higher or lower than Rs. 4.50. That was the policy of the Legislature. But the license issued by Mr. Fisher, the Government Agent, imposes the condition that the arrack should be sold " at a price not less than Rs. 4.50 per imperial gallon." This is a minimum price only. The evidence in the case is that the sale was to some persons at Rs. 3 and to other persons at Rs. 5. The prosecution of the accused is good at least as regards his sale at the rate of Rs. 5. [BONSER, C.J.—There is no evidence

that Rs. 3 was paid to the accused. But why should he not give away the arrack for nothing?] In *Siman v. Jayasuriya* it was held that a tavern-keeper may allow his servant to drink a dram of arrack without payment out of generosity, but any other form of disposal would be illegal (*Ram. 1867, p. 261*). He should sell at the price sanctioned by the Government Agent. (The case was then argued on the merits.)

BONSER, C.J.—

This is a case of some interest as regards the sale of arrack, and I therefore requested the Solicitor-General to be good enough to appear and argue the question, and I am obliged to him for his argument.

The appellant is one of three persons who were authorized by the arrack renter of the Seven Korales to sell at tavern No. 1 at Kurunegala arrack and rum on his behalf. The conviction is under section 9 of Ordinance No. 13 of 1891, which is a re-enactment of section 26 of Ordinance No. 10 of 1844. That section provides that no person shall sell or dispose of by retail any arrack or rum without having first obtained a license according to the form prescribed by the Ordinance, and it also provides that any person who shall sell or dispose of any such liquor, contrary to the tenour of the license to be granted by the Government Agent, shall be liable on conviction to certain punishment. The form of license described by the Ordinance of 1891 is almost word for word identical with that contained in the Ordinance of 1844, and it is in this form:—" This is to certify that I, the Govern-
" ment Agent for ———— Province, do hereby license ———— to
" sell arrack and rum by retail between [certain dates] at [certain
" places], and on condition that the said licensee shall sell arrack
" and rum at the price of ———— per imperial gallon and in pro-
" portion for any less quantity, and at no other price whatsoever."

In the present case, a license was produced purporting to be signed by F. C. Fisher, Government Agent for the North-Western Province, authorizing Mr. T. H. A. de Soysa to sell arrack and rum by retail between certain dates at tavern No. 1, situated at Kurunegala, " on condition that the said Mr. T. H. A.
" de Soysa will sell arrack and rum at a price not less than
" Rs. 4.50 per imperial gallon, or in proportionate price for any
" quantity less than a gallon." Now, it will be observed that this license varies materially from the form in the Ordinance, and that being so I do not think that the appellant could properly be convicted of selling liquor contrary to its tenour. The form in

1901.
February 18.
BONSER, C.J.

the Ordinance fixes a price and says it is not to be sold at any other price. This license fixes a minimum price, and leaves the retailer at liberty to sell at any price exceeding that fixed price that he can get people to give him. The petition of appeal takes the objection that the intention of the Legislature in prescribing that it is not to be sold at any other price than the price fixed was for the benefit of the consumer, and that the retail dealer was at liberty to give away for nothing or to sell at any less price any arrack which he might have to dispose of. In support of that view a case was cited, which was decided in 1867 by this Court by Chief Justice Creasy, Mr. Justice Stewart being present. That was an appeal against a conviction under section 26 of the Ordinance of 1844. The judgment is briefly reported in *Ramanathan's Reports, 1867, p. 281*, and it would appear that a retail dealer was convicted under that section because he had allowed his servant to drink his arrack without payment, and the Supreme Court set aside that conviction, observing that the words " disposing of " evidently relied upon by the prosecution were limited by the preceding word " sell," with which they were associated, and that " sell " and " dispose of " simply meant sell and dispose of by way of sale. The Court went on to say that " for a man to allow his servant to drink a dram of arrack without " payment, but merely as a matter of (probably imprudent) " liberality, is no more punishable under the Ordinance than if " he had taken a dram himself."

I do not understand that the principle of that decision was limited to the case of a man's servants being given the arrack. If a man chooses to give a dram to a friend, an acquaintance, or to a passer by, the case will be equally within the principle of the decision. The Solicitor-General here calls my attention to what is said to be a decision reported in *Grenier's Reports*. He refers me to what is merely a note on *p. 8 of Grenier's Reports* for *1872*: " Held that a person might dispose of arrack " in many ways without there being any sale, and might so " bring himself within the operation of the Arrack Ordinance, " No. 10 of 1844." That may be perfectly true, but the decision, whatever it is, does not say he brings himself within the provisions of this particular section 26 of the Ordinance of 1844, and the words " disposed of " are of no moment or importance whatever in the present case, because the license does not attach any condition to the *disposal* of arrack. The only condition is that it be not *sold* at other than the fixed price. We therefore have, as I was saying, the authority of the Supreme Court that a retail dealer may give away arrack without being obnoxious to

this section. Is there any reason in enacting that while a person may give away a glass of arrack for nothing, he may not sell it for a cent? It seems to me that that provision was inserted for the benefit of the consumer, and that at the time when this Ordinance was passed the Legislature were familiar with the idea that it was the duty of the Government to fix the price of commodities. In England local authorities were allowed to fix the price of bread and ale, and it was thought to be within the province of Government to see that consumers were not charged more than what the Government thought was a fair price for the necessaries of life. It seems to me much more probable that that was the idea which governed the Legislature in fixing the amount at which rum and arrack were to be sold, rather than any idea (which seems to me of modern growth) of consulting the interests of the community by discouraging the sale of these articles.

I am therefore inclined to the opinion that, when the Legislature prescribed the price at which arrack and rum were to be sold, it fixed the maximum price. But however this may be, it seems to me that in this case at least that in two of the charges on which the appellant has been convicted there was no evidence whatever to support the conviction. He was charged and convicted first of having sold five gallons of arrack to one Rankira at the price of Rs. 3 per gallon; secondly, he was charged and convicted for having sold one gallon of arrack for Rs. 3 to a man called Undiya; and thirdly, he was charged and convicted of having sold one gallon of arrack for Rs. 3 to a man called Juan. Now, as regards the sale to Rankira and Undiya, there was absolutely no evidence whatever. Rankira and Undiya were both called. Rankira said: " I know nothing about it. I simply went " with another man called Sohendirala, on whose land I am living. " Sohendirala wanted to buy five gallons of arrack, and I was to " convey it for him. I purchased nothing, and I do not know what " Sohendirala paid." Sohendirala was called, and he said: " I " bought five gallons of arrack. I paid Rs. 5 a gallon for the " arrack, but not to this man. I admit that I told the Inspector " that I had only paid Rs. 3 for it, but this I said through fear." That is the whole of the evidence of these men. They do not say, either of them, that the arrack was bought from this man. There were three people in charge of this tavern, and Sohendirala distinctly says, " I did not pay this man "—that is, the appellant. The Solicitor-General says that if I read between the lines I shall see that the appellant is guilty of selling these five gallons of arrack at Rs. 3 per gallon to Rankira, because it is clear that this

1901.
February 18.
BONSER, C.J.

man Sohendarala is not to be believed, and that his statement on oath that he paid Rs. 5 a gallon for it must be rejected, and that I ought to accept his admission to the policeman that he only paid Rs. 3 for it. But the difficulty is that there is no evidence of the payment of the Rs. 3. There is a statement to the effect that a man who is untrustworthy and not to be believed on his oath admitted to a police constable that he only paid Rs. 3. That is the evidence against the appellant, and therefore as regards Rankira's case, whatever be the construction of the Ordinance, the conviction cannot be sustained.

Then, as regards Undiya's case, the only evidence is Undiya's own evidence. He says: "I went to the tavern and bought two "gallons of arrack from tavern No. 1. I paid Rs. 6 to a man in the "tavern and got a permit and went away." Well, as the Magistrate rightly says, this witness was unable to identify this man as the appellant. It seems to me therefore that that charge must fail.

Then, as regards the case of the man Juan. Juan says: "I "went to tavern No. 1 and I bought one gallon of arrack from "this accused; a man who was there gave me a permit, and I only "paid Rs. 3 for the arrack." He admitted that he had never bought a gallon of arrack before, and did not know what a gallon was. He produced a permit to himself signed by the appellant to remove a gallon of arrack. So that that is an admission under the appellant's own hand that he sold a gallon of arrack to Juan. Then the only question is, whether Juan is to be believed when he says he only paid Rs. 3 for it? That certainly raises a rather nice question, for Juan was undoubtedly an accomplice. If it was an offence to sell arrack at Rs. 3 a gallon, then the man who bought it assisted the man who sold it to commit an offence, for without a buyer there could not be this offence of selling. It requires two persons to buy and sell, and therefore this man was an accomplice. The whole case rests simply on his evidence whether Rs. 3 was paid or a different sum, and the rule is that the evidence of an accomplice is not to be relied upon unless he is corroborated in some material particulars, although it is strict law that a conviction on the evidence of an accomplice, if believed, is good. But in spite of that the practice has always been for judges to tell juries that they ought not to convict on the uncorroborated evidence of an accomplice.

The Police Magistrate was of opinion that all the three charges were completely proved, and he convicted the accused. He says: "I consider the case amply proved on each count. "The first two witnesses turned their coats not wisely, but "too well. They err from the desire to disown too strongly."

1901.
February 18.
BONSER, C.J.

It would really seem as, though disbelieving the first two witnesses, he jumped to the conclusion that because the first two witnesses were not to be believed when they said that the appellant was innocent, therefore he must be guilty. As regards Juan's case, I say then that the question as to whether the Magistrate ought to have relied on Juan's evidence is a nice one; but taking the view that I do of the construction of the Ordinance and therefore of the license, it is not necessary for me to go further into that question, and I therefore set aside the conviction.

I call the Magistrate's attention to the provisions of section 306 of the Criminal Procedure Code as to the drawing up of judgments. The judgment which has been drawn up in this case does not fulfil any of the provisions of that section. It does not specify the offence and the section of the law under which the conviction was had, nor is it dated, nor does it name, as it should do, the accused by name.

I do not know what has been done under the conviction, but whether the fine has been paid or not, I do not see that any time was allowed for its payment as provided for by sub-section 5 of section 312 of the Code. If the fines have been paid, they must be repaid to the appellant.