

QUEEN v. FONSEKA.

D. C., Negombo, 2,150.

1900.
January 17
and 29.

Arrack Ordinance, No. 10 of 1844, s. 13—Punishment in excess of power of District Court to impose—Want of jurisdiction.

The District Court has no jurisdiction to try under section 13 of the Ordinance No. 10 of 1844 the offence of keeping a place adapted for the purpose of distilling arrack.

THIS was a prosecution of the accused before the District Court of Negombo for keeping his premises adapted for the purpose of distilling arrack, contrary to the provisions of section 13 of Ordinance No. 10 of 1844.

Upon the indictment being presented, counsel for the accused contended that the evidence recorded by the committing Magistrate showed that the accused was in possession of 68 gills of arrack and 100 gills of toddy without a license, and that the penalties under section 13 of the Ordinance No. 10 of 1844, imposable for the keeping of the premises adapted for distilling arrack and for being in possession of distilled arrack, would go beyond the jurisdiction of the District Court.

The District Judge upheld this contention and discharged the accused.

The Attorney-General appealed against this order of discharge.

Rāmanāthan, S.-G., for appellant.—Section 13 of Ordinance No. 10 of 1844, for a breach of which the accused was committed for trial, makes him liable, if found guilty, to a “ fine of £100, or to imprisonment, with or without hard labour, to six months, and to a further fine of five shillings for every gallon of spirit which may be proved to have been so distilled.” The indictment does not charge the accused with being in possession of arrack or toddy. That may form the subject of another case, or it may not be instituted at all. Under section 13 it is open to the District Judge to pass, in respect of the offence named in the indictment, a sentence quite within his own jurisdiction, as provided in section 11 of the Criminal Procedure Code of 1898.

There is nothing on the face of the indictment to show that the District Court has no jurisdiction.

Dornhorst, for respondent.—When the evidence comes to be heard, the District Judge may find that more than one offence has been committed. Supposing he is minded to inflict a fine of five shillings for every gallon of spirits distilled, such fine, together with the fine of £100, will make the punishment in

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excess of his jurisdiction. Therefore, such a case should not have been committed before the District Judge. On the analogy of the decision given in P. C., Galle, 84,167 (*Grenier, 1873, P. C. Cases, p. 39*), the District Court must be held to have no jurisdiction to try a case like the present one.

Cur. adv. vult.

29th January, 1900. BROWNE, A.J.—

The order of the Court below must be affirmed, for it seems to me that so long as any offence is punishable with a fine which may exceed Rs. 6,000, it is not within the jurisdiction of a District Court to try it.

The offence for which the respondent was here indicted was that he did keep utensils adapted for the purpose of distilling arrack, contrary to the provisions of Ordinance No. 10 of 1844, in breach of section 13 of that Ordinance, which imposes a liability of a fine of one hundred pounds or imprisonment, with or without hard labour, for six months, and to a further fine of five shillings for every gallon of arrack which may be proved to have been so distilled, &c.

If, therefore, proof were given that a single gallon had been distilled, the respondent would at once have been liable in law and in fact to pay £100 5s. 0d., which is more than the District Court had jurisdiction to impose.

The liability in law existed, the enforcement of it being contingent upon the proof of fact being given. The latter question would not have arisen when the indictment was being presented; only the liability in law would fall to be considered then, and so in P. C., Galle, 84,167 (*Grenier, 1873, P. C. Cases, p. 39*), it was held that a Police Court had no jurisdiction when the liability was to a fine of five pounds, and a further sum of five shillings for every gallon illegally possessed.

