

1901.
 May 6.

PERERA v. GUNASEKERA *et al.*

P. C., Balapitiya, 21,313.

Licensing Ordinance, No. 12 of 1891, s. 47 (1) and s. 13 (1)—License to keep a hotel—Sale of liquor to be consumed off the premises.

A license to keep a hotel, as provided in section 12 (1) of the Ordinance No. 12 of 1891, does not include the privilege of selling intoxicating liquor "not to be consumed on the premises."

THE accused in this case was the bar-keeper of a hotel at Ambalangoda, the proprietor of which had a license to keep a hotel only. The accused was proved to have sold a bottle of whisky to one Davith de Silva, who was not a guest at the hotel, to be consumed off the premises.

The Police Magistrate found him guilty under sections (47) (1) and 13 (1) of the Licensing Ordinance, No. 12 of 1891.

On appeal for the conviction, *Seneviratne* (with him *Van Langenberg*) appeared for the appellant.—The license to the proprietor was to keep a hotel. Section 12 (2) entitles the licensee to sell intoxicating liquor by retail on the premises, and there is no provision in the Ordinance enacting that the intoxicating liquor should not be sold at the hotel for consumption off the premises. It is open to the Government Agent to import such a restriction into the license, but he has not done so. Such a hotel license on which a duty of Rs. 250 is payable involves the minor license to sell liquor for consumption outside the hotel on which a duty of only Rs. 75 is payable. The license to one who is not a hotel-keeper to sell by retail intoxicating liquor to be consumed on the premises is Rs. 150. The two minor licenses cost Rs. 225, but the hotel license costs Rs. 250 and draws with it the privileges of the two lesser licenses.

Rāmanāthan, S.-G., for respondent, *contra.*

6th May, 1901. MONCREIFF, J.—

The accused in this case was charged under section 47 (1) and section 13 (1) of the Licensing Ordinance, No. 12 of 1891, for selling at Ambalangoda, in his capacity as a bar-keeper of a hotel, a bottle of Cheviot brand whisky to be consumed off the premises to one Davith de Silva, such sale being contrary to the terms of the license. There has been a conflict of evidence

as to whether this bottle of whisky was so sold to Davith de Silva. The Magistrate has believed the evidence of the witnesses for the prosecution, whose testimony has clearly proved the charge if believed; and he has not believed the witnesses for defence. I am therefore unable to question, on the materials before me, the justice of his decision upon the facts.

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It was, however, urged on behalf of the accused that the license under which the hotel was carried on included the privilege of selling intoxicating liquors to be consumed off the premises. The terms of the license are as follows:—" I. George Merrick Fowler, Government Agent of the Southern Province, do hereby license " B. Gunasekera of Ambalangoda to keep a hotel at Ambalangoda at the upstairs house by the Colombo-Galle high road. " standing almost opposite the Ambalangoda resthouse and " belonging to the licensee." It was contended that this license, in the true interpretation of section 12 of Ordinance No. 12 of 1891, sub-section (2), entitled the licensee to sell intoxicating liquors off the premises.

The sub-section provides that the license to keep a hotel shall entitle the licensee to sell intoxicating liquor by retail to be consumed on the premises to which such license extends, and it is contended that, taking that provision along with the list of stamp duties enumerated in sub-section (1), the holder of a hotel license may sell liquor to be consumed off the premises, because from an examination of the stamp duties it appears that the privilege of selling liquor upon the premises is much greater than that of selling it to be consumed off the premises. I am not sure that the premises upon which that argument is founded is sound. In any case I do not take that view of that section. The interpretation of the word " hotel " in section 4 is a place where intoxicating liquor is furnished for payment to travellers and others who are accommodated in the hotel, and one of the primary objects of a hotel is to provide intoxicating liquor for those persons who are accommodated in the hotel. The sale of intoxicating liquor to be sold off the premises is, in my opinion, a secondary object which a hotel-keeper may have in view; and in one sense, I may say, it is an object outside the range of the primary objects of a hotel. I am of opinion that the privilege of selling the liquors to be consumed off the premises is a greater concession to the licensee of a hotel than that of selling intoxicating liquor to be consumed upon the premises, the latter being a privilege already granted in the definition of " hotel " in section 4. For these reasons I think the judgment should be affirmed.