BANDARANAYAKA *v.* SOYSA.

1903.
June 22.

P. C., Colombo, 13,551.

Arrack—Ordinance No. 13 of 1891, s. 9—Retail sale contrary to license—" Sell arrack at the price of not less than Rs. 4.48 per imperial gallon. "

Upon a license to sell arrack by retail issued in terms of section 9 of the Ordinance No. 13 of 1891, it is not competent to the licensee to sell arrack at any other price than the one mentioned in the license.

Jansz v. Gregoris, 4 N. L. R. 359, overruled.

THIS was a prosecution under section 9 of the Ordinance No. 13 of 1891 for selling arrack at the rate of Rs. 3 per gallon,

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whereas the licence authorized sale "at the price of not less than Rs. 4.48 per gallon and at no other price whatever." The Police Magistrate refused process on the ground that according to Bonser, C.J. (in *Jansz v. Gregoris, 4 N. L. R. 359*), the words of the license as to the price denoted only the maximum price, and that the licensee was at liberty under the Ordinance to sell at any lower price if he liked to do so.

The complainant appealed against that order. Mr. Justice Grenier, before whom the case came on for hearing in due course on the 4th June, 1903, reserved it for a Full Court, as his lordship could not agree with *Jansz v. Gregoris (4 N. L. R. 359)*.

Accordingly, this case was argued before Layard, C.J., Wendt, J., and Middleton, J., on 15th June, 1903.

H. J. C. Pereira and *E. W. Jayawardene*, for appellant.

Dornhorst, K. C., and *Pieris*, for respondent.

Cur. adv. vult.

22nd June, 1903. LAYARD, C.J.—

The Assistant Government Agent charged the accused, who were the renters of the arrack farm for the years 1901 and 1902, with breach of section 9 of the Ordinance No. 13 of 1891, in that they sold arrack contrary to the terms of the license issued to them. That section provides that no person shall sell or dispose of by retail any arrack without having first obtained a license as near as is material to the form prescribed by the Ordinance, and it also provides that any person who shall sell or dispose of any arrack contrary to the tenor of the license granted by the Government Agent shall be liable on conviction to certain punishment.

The form of license prescribed by the Ordinance runs as follows:—

"This is to certify that I, ———, the Government Agent of the ——— Province, do hereby license ——— to sell arrack and rum by retail from the ——— day of ———, one thousand Eight hundred ———, to the ——— day of ———, One thousand Eight hundred and ———, inclusive, at the tavern No. ———, situated at ———, and at no other place, on condition that the said ——— shall sell arrack and rum at the price of ——— per imperial gallon, and at no other price."

In the present case the license, purporting to be signed by the Government Agent of the Western Province, authorizes Solomon Peter Soysa, Francis James Mendis, and H. Francis Fernando to sell arrack by retail at tavern No. 8, situated at Maligawatta in

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Biyanwila, on condition that they " shall sell arrack at the price of not less than Rs. 4.48 per imperial gallon, and in proportion for any less quantity, and at no other price whatsoever." This license does not vary materially from the form prescribed in the Ordinance and the license appears to me to fix the price for which the arrack must be sold, and to prohibit its sale at a less price. The Magistrate, following the judgment of Chief Justice Bonser in the case of *Jansz v. Gregoris* (*4 N. L. R. 359*), refused to issue process. He further pointed out that there had been delay in bringing the case, and that the delay had not been in his opinion satisfactorily accounted for. It has been explained to us that the delay was due to the renter desiring that no action should be taken pending decision in another similar case. I think, under the circumstances, the delay ought not to operate as a bar to further proceedings in this case.

There remains, however, for the determination of this Court the question whether we will follow the ruling of Chief Justice Bonser in the case above-mentioned. I would here mention that the Magistrate was perfectly right in following that decision, so much so that, when this appeal came on first before my brother Grenier, he felt that sitting alone he was bound by the judgment, and so reserved the question for a Full Court. Chief Justice Bonser has read the condition forming part of the license prescribed by the Ordinance as merely fixing the maximum price. The condition so read runs as follows: " the said licensee 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." These words appear to me to admit of but one meaning; they fix the price at which arrack is to be sold, and say it is to be sold at no other price whatsoever. I do not think I am at liberty to speculate on the intention of the Legislature and to depart from the actual meaning of the words used by the Legislature, which are unambiguous in themselves. Chief Justice Bonser appears to me in his judgment to have speculated on what the intention of the Legislature was. To show how dangerous it is to speculate in that way I would, with great deference to his judgment and opinion, state I arrive at an exactly opposite conclusion to what he does as to the intention of the Legislature. He asks in his judgment, " 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 ?" I think the answer to it is that persons are not likely to give away arrack indiscriminately in large quantities, whilst if they are allowed to reduce the price considerably they might sell large quantities at a profit, at a small price, and thus encourage arrack drinking to an extent which

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would lead to its abuse. I see no reason to think that the provision was inserted for the benefit of the consumer as suggested by Chief Justice Bonser. It is true that the legislation goes back to 1844, and the Legislature at that day may have been familiar with the idea that it was the duty of Government to fix the maximum price of commodities. However, if it was their intention to fix the maximum price as suggested, they were very unhappy in the choice they made of words to express that intention. They could have easily said that the licensee " shall not sell arrack at a price exceeding Rs. 4.48 per imperial gallon," and there was no necessity for emphasizing the price fixed by adding " at no other price whatsoever." Again, the Ordinance with which we are dealing was passed in 1891, and though it is true that the form of license prescribed by that Ordinance is almost identical with the one prescribed by the Ordinance of 1844, it is not absolutely identical, and certainly there is no reason to think that the Legislature in 1891 was governed by the idea that it was the duty of Government to fix the price of arrack to prevent consumers being charged more than the Legislature thought was a fair price.

In my opinion, to depart from the actual meaning of the words used by the Legislature and to speculate on the intention of the Legislature and to construe them according to one's own opinion of what must have been passing through the minds of the persons comprising that body, is not to construe the Ordinance, but to alter it.

I would set aside the order of the Magistrate and remit the case to the Police Court to be proceeded with in due course of law.

WENDT, J.—

This is an appeal by the complainant, with the sanction of the Attorney-General, against an order of the Police Magistrate, who, after examining certain witnesses on behalf of the prosecution, in the absence of the accused, refused to issue summons or proceed further with the charge. The complainant in his evidence said he charged S. P. Soysa and F. J. Mendis under section 9 of Ordinance No. 13 of 1891, in that they sold three bottles of arrack on the 31st December, 1902, at Biyanwila at 50 cents a bottle, a rate less than that stipulated for in the conditions of sale and in the license issued to them by the Government Agent. Soysa and Mendis, together with one H. F. Fernando, now dead, were the " arrack renters " for the Siyane and Hewagam korales for the two years

beginning 1st January, 1901, and they held a retail license dated 31st December, 1901, in the following terms:—

" This is to certify that I, George Merrick Fowler, Government Agent for the Western Province, do hereby license Solomon Peter Soysa, Francis James Mendis, and Hettiakandage Francis Fernando to sell arrack by retail from the 1st day of January, One thousand nine hundred and two, to the 31st day of December, one thousand nine hundred and two, inclusive, at the tavern No. 8, situated at Millagahawatta in Biyanwila, and at no other place, on condition that the said Solomon Peter Soysa, Francis James Mendis, and H. Francis Fernando shall sell arrack at the price of not less than Rs. 4.48 per imperial gallon, and in proportion for any less quantity, and at no other price whatsoever."

Evidence was given to show that on 31st December, which was the last day of the term during which the licensees were renters, one Johannes Mendis sold to the witness Don Phillippu at the tavern named in the license three bottles of arrack (equivalent to half a gallon) for the sum of Re. 1.50. Johannes Mendis was the usual salesman at that tavern. If he was the servant of the licensees, the license would protect him as well as them.

The Magistrate felt himself bound by the decision of Bonser, C.J., in the case of *Jansz v. Gregoris* (*4 N. L. R., 359, 1 Br. 363*), to hold that the license now in question differed materially from the form set out in the Ordinance, and that therefore the accused could not be convicted of selling contrary to its tenor. Certainly the licence which Bonser, C.J., had under his consideration was substantially in the same terms as that now in question. In both licenses the blank in the form after the words " price of " was filled up with the words " not less than " a specified sum, and the effect of supplying the blank in the manner adopted in the present license is that no sale shall be made at a price which is not less than Rs. 4.48 per gallon. The Chief Justice was of opinion that the price intended by the Ordinance to be inserted in the blank was a maximum price; that the licensee was at liberty under the Ordinance to sell at any lower price, if he chose, and that therefore a license which forbade him so to do departed materially from the form scheduled in the Ordinance. With unfeigned respect for the opinion of Sir Winfield Bonser, I think he did not give their proper weight to the words of the Ordinance. In the words of Lord Campbell, C.J., in *Queen v. Skeen* (*28 L. J. M. C., at p. 94*) " where by the use of clear and unequivocal language, capable of only one construction, anything is enacted by the Legislature, we must enforce it, although in our own opinion it may be absurd or

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mischievous." In the present instance, the language of the Ordinance is unequivocal and admits of but one meaning. The licensee is to sell at the price of so much, and at no other price whatsoever. There is nothing whatever in the Ordinance itself which entitles us to read this as though the Legislature had said "no greater price", and to imply therefore that the arrack might be sold at any less price.

The interpretation we are now reviewing was adopted in opposition to the plain meaning of the words, because the Chief Justice was of opinion that the Legislature had specified a price in accordance with the idea then generally entertained that it was the duty of Government to fix the price of commodities in the interests of the consumer, in order to prevent his being charged an unreasonable price therefor, and that the Legislature was not actuated by the desire to suppress drunkenness by keeping the price of intoxicating liquors high. His lordship's attention was not drawn to the older legislation on the subject, or I venture to think he would have arrived at a different conclusion. So far back as the year 1818 two regulations were passed (Nos. 3 and 4 of that year) "for the more effectual security of the revenue derived from the retail of arrack and toddy" in the Sinhalese and Malabar districts respectively, and in the latter enactment occurs the provision (section 8) that "no wine or spirits, save and except genuine arrack of good quality and proof, shall be sold by retail at a lower rate than nine rixdollars per gallon" under a penalty. These enactments (the earliest in British times which deal with the subjects generally) also recognize the existence of a similar restriction in the case of arrack, for they lay down that the renter or licensed retailer of arrack may be required by the collector of the district to take over the stock of a deceased possessor of arrack "at a rate of 20 per cent. under the authorized retail price." This latter provision is repealed in the enactments of 1819 and 1820, and there is a somewhat similar section (section 49) in the Ordinance No. 10 of 1844, which is now in force. If, with the provisions of the regulations of 1818 before me, I were to inquire what the object of the Legislature was in naming a fixed price, I should say that it was to prevent the sale of arrack below that price; that it was a minimum, not a maximum price. The reason why the statutes themselves do not fix the maximum retail price of arrack is, I suppose, that that is done in the conditions of sale under which the "renter" purchases the farm. In the case before us a copy of the conditions has been produced, and they provide (article 7) that "arrack shall be sold by retail at the places and taverns enumerated in the list A at a

price not less than Rs. 4.48 per gallon, or a proportionate price for any quantity less than a gallon, and similarly in the case of toddy.

It seems clear to my mind therefore that the policy of the Legislature has been, while having due regard to the profits of the renter, who contributes so largely to the revenue, to keep the price of arrack high and thereby to prevent the spread of drunkenness. And the wisdom of the limitation on the price will be apparent on a consideration of what usually happens upon a change of renters, such as was about to take place when the alleged offence was committed. The renter has a large stock in hand, which it will be unlawful to him to possess or sell after his "rent" terminates. If the incoming renter agrees to take it over all is well, but if otherwise the temptation is strong for the outgoing renter to get rid of his stuff at almost any price. As the wholesale market value of arrack at the distillery is only a rupee or two per gallon, it is plain that even a sale much below the authorized price will leave a profit. The fact that the renter is "selling off" soon gets abroad, and the villagers flock to lay in a stock of cheap arrack, and there is an outburst of drunkenness and its attendant evils. It is this selling off below the authorized price that the accused are alleged here to have been guilty of, the licensees at this tavern being the renters themselves.

In my opinion, the license now before us does not depart from the form attached to the Ordinance in forbidding sales at less than Rs. 4.48 per gallon.

The Magistrate appears not to have noticed that, if the accused could not be convicted of selling contrary to their license by reason that the license was not a license under the Ordinance, they might yet be guilty of selling without a license. I so held in P. C., Galle No. 19,000, on 1st June, 1903, where the Government Agent had inserted in the license certain conditions unwarranted by the Ordinance. This point was not open in *Jansz v. Gregoris*, because there was no such charges against the accused, but it is open here, as no charge has yet been formulated.

I think the case should be remitted to the Magistrate to be proceeded with in due course.

GRENIER, A.J.—

Both my lord and my brother Wendt have dealt so fully with the question involved in this appeal that there is hardly anything that I can add. The words used in the Ordinance and the license

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are free from all ambiguity, and there is no material difference between them. The test I would apply in interpreting these words is this: " What is the meaning they convey to the ordinary mind ? " It is possible, of course, by the introduction and skilful use of comparative terms, to invest these words, as indeed the words of most statutes, with more than one meaning, subtle and otherwise; but such a course would certainly be in opposition to and total disregard of well-known canons of construction, the object of which is to simplify and explain rather than to mystify and render obscure. When, for instance, any person of ordinary intelligence is asked to sell a certain article for not less than two rupees, and at no other price whatsoever, will he not at once understand that it is an absolute direction to him, whatever may be the intention of the person giving the direction or his reason for mentioning this sum—not to sell at any other price but the one specified. As this Court has had occasion so often to say, there is no magic in words, which must be given their plain and obvious meaning.

Now, as to the reason why the Legislature has fixed a certain price for a gallon of arrack, opinions will naturally differ in the absence of any express declaration. Whether arrack is to be regarded as a commodity, the price of which must be regulated by statute in the interests of the consumers, or as an intoxicant which is the cause of crime in this country, and the sale of which must, therefore, be restricted by a high price being placed on it, is a purely speculative matter, and must be viewed entirely apart from the question of right interpretation. As my lord has remarked, it is not the duty of judicial tribunals to speculate on the intention of the Legislature, and as to which was passing through the mind of the framers of the Ordinance in question. It is enough that we attach a plain meaning to plain words, and abandon all speculation on the manifestly difficult question of intention. I agree to the order proposed by the rest of the Court.