

## VIGORS v. DE SOYSA.

P. C., Kalutara, 5,014.

1904.  
May 2.

*Arrack—Ordinance No. 13 of 1891—License to distil issued to B on behalf of A—Liability of licensee to make returns of distillation.*

Where, at the request of A, an arrack renter, the Government Agent issued under Ordinance No. 13 of 1891 a license to distil arrack, wherein the name of the proprietor of the distillery was stated to be "B, for A," and A was charged with having failed to make a correct return as required by section 16 of Ordinance No. 13 of 1891,—

*Held* that, though the license was issued to B for A, yet B was the actual licensee, and as such was responsible for the returns.

*Semle*, that the making of incorrect returns is not an offence under section 18 of the Ordinance.

**T**HE accused, being the arrack renter of the Western Province for two years ending December 31, 1904, requested the Government Agent by letter to be "good enough to grant a licence to the distillery situate at Otarayawatta in Katukurunda, Kalutara Totamune, in the name of Don Suaris Rodrigo of Beruwala, on my (*i.e.*, his own) behalf for the year 1903, under the management of C. D. S. Gunasekera, and I beg to state that I am prepared to comply with the necessary requirements of the Ordinance No. 13 of 1891."

The Government Agent accordingly issued a license to distil spirits as follows:—

No. 134.

*Licence to distil Spirits.*

This is to certify that I, William Loring Kindersley, Assistant Government Agent for the Kalutara District, do hereby license the distillation of arrack by (the party or parties) with the still and at the place hereunder mentioned, from the 29th day of May, 1903, to the 31st day of December, 1903.

Name of Proprietor.	Name of Manager	Size of Still.	Where situated.
W. Suaris Rodrigo, for A J. R. de Soysa	C. D. S. Gunasekera	170 gallon	Otarayawatta at Katukurunda

This 20th of May, 1903.

W. L. KINDERSLEY,  
Assistant Government Agent.

The accused Mr. De Soysa was charged by the Government Agent with having failed to make a true return as licensed distiller for distillery No. 134 at Katukurunda for the two weeks ending 5th and 12th December, 1903, as required by section 16 of Ordinance No. 13 of 1891, and thereby having committed an offence punishable under section 18 of the Ordinance.

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It was contended that the licensed distiller was Don Suaris Rodrigo and not Mr. De Soysa, and that therefore Mr. De Soysa could not be punished for a failure to make the necessary returns for those two weeks.

The Police Magistrate found the accused guilty, and sentenced him to a fine of Rs. 20 by the following judgment:—

“ The application for the license is by Mr. De Soysa. It is he who owns the business and makes his money on it. It is for his convenience that Rodrigo's name was put on the license, but it was all along clear that De Soysa is the real distiller. Rodrigo is a mere sort of factory hand employed to watch the boiling of the toddy and its distillation. I hold that accused De Soysa is the distiller, and is liable under the Ordinance. I therefore convict him, as it was his duty to see that the returns were sent in.”

The accused appealed.

The case was argued before Layard, C.J., on 22nd April, 1904, and re-argued before Sampayo, A.J., on 28th April.

*Walter Pereira*, for appellant.

*Rámanáthan, S.-G.*, for respondent.

*Cur. adv. vult.*

2nd May, 1904. SAMPAYO, A.J.—

In this case the Assistant Government Agent of Kalutara complained to the Court that the accused A. J. R. de Soysa, being the licensed distiller for 1903 of the distillery No. 134, situated at Katukurunda, had failed to make true and correct returns for the weeks ending 5th and 12th December, 1903, as required by section 16 of the Ordinance No. 13 of 1891, and that he thereby committed offences punishable under section 18 of the said Ordinance. The Police Magistrate convicted the accused on this charge, and sentenced him to pay a fine.

It appears that the accused, who was the arrack renter of the Central Province for 1903 and 1904, wrote to the Government Agent on 9th February, 1903, requesting him to grant a license to the above distillery in the name of Welipitiyage Don Suaris Rodrigo on his (the accused's) behalf, giving the name of one Charles de Silva Gunasekera as the manager of the distillery, and stating that he (the accused) was prepared to comply with the requirements of the Ordinance. A license was upon this application granted, wherein the name of the grantee was given as “ Suaris Rodrigo for A. J. R. de Soysa,” and the name of Gunasekera is given as the manager. It is argued for the accused, who has appealed, that the licensed distiller is not himself but

Suaris Rodrigo and I think that this contention is right. It may be that the license was issued to Rodrigo for or on behalf of some one else, but he is nevertheless the licensee, and is responsible as such. The Government Agent might have refused to grant the license to any one but the applicant therefor, but he did not do so, and, in my opinion, the accused cannot be said to be the licensed distiller.

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It appears from the letter of the Assistant Government Agent of 26th April, 1904, in reply to an inquiry directed by Layard, C.J., before whom this case first came for argument, that as a matter of fact the returns both for the weeks in question and for all the other weeks in the year were made by the manager Gunasekera, and the Assistant Government Agent adds that his real complaint is that the returns were incorrect. This is a new phase of the matter, but neither in the written complaint made to the Court nor in the proceedings and judgment of the Police Magistrate does it appear in what respect the returns were incorrect. Moreover, the offence created by section 18 of the Ordinance relates to neglecting or refusing to make any return required by the Ordinance to be made in the form and within the time specified, and it seems to me that making an incorrect return is not an offence under that section. But I need not go into this point, because in any case the person to be charged would be the licensee, and I have already held that the accused was not the licensee. I may add that it was stated at the Bar that the Chief Justice came to the same conclusion as regards the construction of the actual license issued.

I set aside the conviction and acquit the accused.

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