

1947

Present : Jayetileke J.

SELLIAH (Excise Inspector), Appellant, and DE SILVA, Respondent.

*S. C. 877—M. C. Balapitiya, 57,212.**Excise Ordinance (Cap. 42), s. 17 (d)—Sale of brandy—When saleable without licence—Quitting station.*

Under the proviso (d) to Section 17 of the Excise Ordinance a person who procures foreign liquor for his own use can sell it only when he quits his station.

Perera v. Benedict (1946) 47 N. L. R. 519 referred to.

A PPEAL against an acquittal from the Magistrate's Court, Balapitiya.

T. S. Fernando, C.C., for the complainant, appellant.

G. P. J. Kurukulasuriya (with him *Conrad Dias*.) for the accused, respondent.

Cur. adv. vult.

December 3, 1947. JAYETILEKE J.—

This an appeal by the complainant with the sanction of the Attorney-General against an order made by the Magistrate acquitting the accused.

The complainant, who is an Excise Inspector, charged the accused under section 17 of the Excise Ordinance (Cap. 42) with having sold a glass of brandy for Rs. 3 to one Gnanadasan without a licence from the proper authority.

The accused admitted that he had in his possession two bottles of brandy which, he said, he purchased for his own use on medical advice, but he denied the sale.

The Magistrate accepted the evidence of Gnanadasan with regard to the sale, but, with much reluctance, he held that under section 17 (d) of the Ordinance the accused had the right to sell the brandy. He did so because he considered himself bound by the judgment of this Court in *Perera v. Benedict*¹. I may state at once that that judgment has not dealt with the question under consideration, and that it is not applicable to the present case.

Section 17 reads :—

“No excisable article shall be sold without a licence from the Government Agent :

Provided that—

- (a) a person having the right to the toddy drawn from any tree may sell the same without a licence to a person licensed to manufacture and sell toddy under this Ordinance or to a person licensed under this Ordinance to manufacture arrack or vinegar from toddy ;

¹ (1946) 47 N. L. R. 519.

- (b) a licence for sale in more than one district of a province shall be granted by the Government Agent of the Province and not by the Assistant Government Agent ;
- (c) a licence for sale in more than one province shall be granted by the Excise Commissioner ;
- (d) nothing in this section applies to the sale of any foreign liquor legally procured by any person for his private use and sold by him or by auction on his behalf, or on behalf of his representatives in interest upon his quitting a station or after his decease. ”

Two views on proviso (d) have been submitted to me. Learned Crown Counsel contended that in enacting section 17 (d) the object of the legislature was to give a person the right to sell any foreign liquor, which he had procured for his own use upon his quitting a station and also to give to his legal representatives the right to sell it after his death. He said that, if the words “ upon his quitting a station ” are changed from their existing position and inserted after the words “ or by auction on his behalf ”, there can be no ambiguity in the proviso at all. He invited my attention to the case of *The King v. Ettridge*¹ in which Darling J. said :—

“ We are of opinion that we may, in reading a statute, reject words, transpose them, or even imply words if this be necessary to give effect to the intention and meaning of the legislature ; and this is to be ascertained from a careful consideration of the entire statute. ”

Mr. Kurukulasuriya, on the other hand, contended that there was no ambiguity in the language of the proviso and that, according to the literal meaning of the words used, a person had the right to sell foreign liquor procured by him for his private use, and that his representatives in interest, too, had the right to sell such liquor when he left his station or when he died. He said that the expression “ representatives in interest ” is used in proviso (d) in two senses ; it means “ attorneys ” when read with the words “ upon his quitting a station ” and “ legal representatives ” when read with the words “ after his decease ”.

The Excise Ordinance has been framed to regulate the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs. Section 17 prohibits the sale of any excisable article without a licence from the Government Agent. There are two exceptions (a) and (d). The former gives a person having the right to draw toddy from any tree, authority to sell it without a licence to a person who has a licence to manufacture arrack or vinegar from toddy ; the latter is the one which I have to interpret. I have to consider whether the legislature intended to give a person the unrestricted right to sell foreign liquor which he procured for his own use, having prohibited in the opening words of section 17 the sale of such liquor without a licence. When one considers the Ordinance as a whole, and the purpose for which it was passed, I cannot bring myself to believe that it ever so intended. It seems to me that the object of proviso (d) was to give a person who

¹ (1909) 2 K. B. D. 24 at page 28.

procured foreign liquor for his own use the right to sell his stock when he quitted his station. This view is supported by section 20—3 (a) of the Bengal Excise Act 5 of 1909 which reads :—

“No license shall be required for any of the following sales, namely :—

- (a) The sale of foreign liquor lawfully procured by any person for his private use—when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease ;”

The interpretation contended for by Mr. Kurukulasuriya will, in my opinion, reduce the Ordinance to a nullity. I think this is eminently a case for the application of the principle that the manifest intention of a Statute must not be defeated by too literal an adherence to its precise language.

I would, accordingly, set aside the order made by the Magistrate, and send the case back with the direction that the Magistrate should enter an order convicting the accused and pass such sentence on him as he thinks fit.

Order set aside.

