

Present: Wood Renton J.

1911.

GOONETILLEKE v. SAINERIS.

638—P. C. Negombo, 15,876.

Arrack—Possession of less than two quarts—No offence—Ordinance No. 10 of 1844, s. 32.

The possession of less than two quarts of arrack is not an offence under section 32 of Ordinance No. 10 of 1844.

THE facts are set out in the judgment.

L. H. de Alwis, for the accused, appellant, relied on *Endonis de Silva, v. Shona*.¹

Walter Pereira, K. C., S.-G., heard *amicus curiæ*.

October 12, 1911. WOOD RENTON J.—

The accused-appellant has been convicted under section 32 of Ordinance No. 10 of 1844 of having possessed nine gills of arrack not legally sold to him by a licensed retail dealer, and has been ordered to pay a fine of Rs. 50. It was argued on behalf of the appellant that the conviction was bad on the ground that the possession of less than two quarts of spirits is not an offence under section 32 of the Ordinance of 1844. After hearing his counsel and the learned Solicitor-General as *amicus curiæ*, I feel bound to uphold this contention. Section 32 itself says nothing as to the quantity of spirits the possession of which is unlawful, unless it can be brought within one of the exceptions which are embodied in the section. It was held, however, in the case of *Endonis de Silva v. Shona*¹ that possession of arrack in less quantity than two quarts is not an offence within the meaning of section 32 of Ordinance No. 10 of 1844. I am not aware of any other authority directly in point. But that case is one of old standing, and I think that I ought to follow it. I am all the more disposed to do this because section 33 of the Ordinance allows, by implication, arrack in any quantity not exceeding two quarts to be removed without a permit, and thereby seems to imply that such a quantity of arrack may be possessed without any offence being committed. I set aside the conviction and sentence, and direct the acquittal of the accused.

Set aside.

¹ (1876) *Ram.* 1872-1876, 315.