

*Present : Maartensz A.J.*

1929.

MENON *v.* ABDUL RAHMAN.

139—P. C. Kandy, 27,299.

*Opium—Possession by certified consumer—Excess of certified amount—Burden of proof—Ordinance No. 5 of 1910, s. 26.*

Where a registered consumer of opium possessed a quantity in excess of the certified amount the onus of proving lawful possession is upon him.

**A** PPEAL from a conviction by the Police Magistrate of Kandy.

*Navaratnam*, for accused, appellant.

April 25, 1929. MAARTENSZ A.J.—

The accused appeals from a conviction under section 8 (1) of the Opium Ordinance, No. 5 of 1910, for unlawfully possessing 645 grains of opium without having obtained a certificate from the Government Agent of the Central Province.

The facts on which the accused was convicted were not disputed either in the Police Court or in appeal.

The accused is a registered consumer, and contends that he is entitled to the benefit of the exception credited by section 5 (f) of the Ordinance No. 5 of 1910.

The section enacts that “ from and after the said date it shall be unlawful for any person to have or to keep in his possession . . . any opium except in the following circumstances, that is to say, (f) when it is in the possession of a registered consumer who has been supplied with the same in accordance with the provisions of this Ordinance ”.

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The provision of the Ordinance relating to registered consumers is section 11. Sub-section (2) of this section provides that a certificate may be issued to a registered consumer stating that he has been registered as a consumer of opium, the manner and form of its use, the quantity of opium which may be supplied to him, and the name or designation and place of business of the authorized vendor by whom the opium may be supplied.

The exception pleaded by the accused would have been a complete defence if he had a certificate for 645 grains of opium, but his certificate is limited to 290 grains.

The appellant's Counsel suggested that the opium in excess of the quantity allowed by the certificate might have been opium previously supplied to the accused and not consumed, and argued that the burden of proving that the accused's possession of opium in excess of the quantity allowed by the certificate was illegal was on the prosecution.

I am unable to adopt this argument. The exception created by section 5, clause (f), is an exception in favour of a consumer who has been supplied with opium in accordance with the provisions of the Ordinance. The accused was found in possession of opium in excess of the quantity which he was entitled to in accordance with the provisions of the Ordinance, and by section 26 of the Ordinance "the burden of proving that the possession . . . of opium is not unlawful by reason of any exception contained in this Ordinance lies on the person alleging the same".

The accused has not discharged this onus by proving that the opium of which he was in possession was opium supplied to him under the certificate.

I accordingly dismiss the appeal.

*Affirmed.*

