Present : Wood Renton J.

1912.

COORE *v.* FERNANDO.

203—P. C. Gampola, 764.

Licensed premises—Opening doors after hours for taking into premises unsold liquor from a circus—Ordinance No. 12 of 1891, s. 39 (1).

Accused, a liquorshop-keeper, who had a special license to sell liquor at a travelling circus, opened at 1.15 A.M., the door of his liquorship, where he lived, for taking into the premises the liquor which had not been disposed of at the circus.

Held, that the accused was guilty of an offence under section 39 (1) of Ordinance No. 12 of 1891.

"It is impossible in cases of this kind to lay down any general rule, and it is not desirable to attempt to do so. Each case must be decided on the particular facts that it presents."

Perera v. Gomesz[1] and *Weerakoon v. Fernando*[2] distinguished.

THE accused in this case was a liquorshop-keeper, who resided in his shop. He obtained a special license to sell liquor at a travelling circus. He brought back with him from the circus a cart load of liquor which had not been disposed of, and opened the door of his shop at 1.15 A.M. for taking the liquor into the premises. The accused was charged under section 39 (1) of Ordinance No. 12 of 1891, and was convicted and sentenced to pay a fine of Rs. 25, or in default to undergo one month's rigorous imprisonment.

The accused appealed.

Bawa, K.C., for the accused.

Walter Pereira, K.C., S.-G., for the Crown.

March 28, 1912. WOOD RENTON J.—

The accused-appellant was charged in the Police Court of Gampola with having kept his licensed premises open during prohibited hours, in contravention of the provisions of section 39 (1) of Ordinance No. 12 of 1891. The learned Police Magistrate has convicted him, and has sentenced him to pay a fine of Rs. 25, or in default to undergo one month's rigorous imprisonment. The facts are admitted. The appellant had a special license to sell liquor at a travelling circus on the night of the commission of the alleged offence. There is no express statement in that license as to the hours to which it extended, but the case has been argued before me on the assumption, which is no doubt correct, that it covered the prohibited hours, as defined by section 39 (1) of Ordinance No. 12 of 1891. The appellant lives on his licensed premises, and, in my opinion, he could not have been convicted of an offence under the section in question, if all that he had done was to open the door of these premises for the

[1] *(1909) 12 N. L. R. 210.*

[2] *(1911) 14 N. L. R. 472.*

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purpose of getting into them himself for the night. But he did more than that. He brought back with him from the circus a cart load of liquor which had not been disposed of, and at the time when the police came on the scene he was having that liquor unloaded. The learned Police Magistrate has held that this opening of the premises constituted a contravention of section 39 (1), and I think that he has rightly held so. The present case is quite different from those of *Perera v. Gomesz*[1] and *Weerakoon v. Fernando*,[2] on which the appellant's counsel relied. In the former of those cases it was proved affirmatively that the licensed premises in which the appellant resided had been opened merely for the purpose of allowing his sister, his sister-in-law, and his cousin to go out so as to catch an early boat at Negombo. I may point out in passing that the head-note to that case goes further than the judgment, and is not quite correct. I did not hold or intend to hold that in a prosecution for keeping a tavern or premises licensed for the sale of intoxicating liquor open between the hours of 8 P.M. and 5 A.M. contrary to the provisions of sub-section (1) of section 39 of Ordinance No. 12 of 1891, it must be shown that such tavern or premises were kept open for the sale of intoxicating liquor. In the portion of the judgment in which that statement occurs I merely summarized the argument of the appellant's counsel; and, although in the latter part of the judgment, I might well have expressed myself more clearly, the ground of the decision was that there was affirmative evidence that the premises had been opened for a perfectly lawful and innocent purpose.

In the case of *Weerakoon v. Fernando*,[2] it was proved that the appellant, a tavern-keeper, who was in the habit of sleeping in the tavern, took his dinner elsewhere and returned to the tavern, and that the door had been opened for the purpose of letting him in. He was standing for a moment on the verandah, speaking to a man, at the time that the Station House Officer came up. There again there was affirmative proof on the part of the defence that the tavern door had been opened only for the purpose of allowing the tavern-keeper to do what the law allows him to do, that is to say, to sleep on his licensed premises.

The present case, however, is quite different. There is nothing in the evidence to show that it was not possible for the appellant to have left the undisposed of balance of liquor at the circus tent under a proper guard till the morning. It is impossible in cases of this kind to lay down any general rule, and it is not desirable to attempt to do so. Each case must be decided on the particular facts that it presents.

I agree with the learned Police Magistrate that here the tavern was not opened or kept open for a lawful purpose, and that the appellant has committed the offence with which he was charged. The appeal is dismissed.

Appeal dismissed.

[1] *(1909) 12 N. L. R. 210.*

[2] *(1911) 14 N. L. R. 472.*