

1936

Present : Abrahams C. J.

EXCISE INSPECTOR, NAWALAPITIYA *v.* MENIKRALA.

392—*P. C. Gampola, 9315.*

Excise Ordinance—Licence to draw sweet toddy—Employee not carrying out instructions—Liability of holder of licence—Ordinance No. 8 of 1912, s. 50.

Where a person who held a licence to draw sweet toddy gave instructions to prevent fermentation, which were not carried out by those in his employment,—

Held, that the holder of the licence was liable under section 50 of the Excise Ordinance.

The meaning of the term “person in his employ” explained.

A PPEAL from a conviction by the Police Magistrate of Gampola.

Cyril E. S. Perera (with him G. E. Chitty), for accused appellant.

M. F. S. Pulle C.C., for Crown, respondent.

October 12, 1936. ABRAHAMS C.J.—

It is not clear to me whether or not the learned Magistrate accepted the statement of the appellant as to the instructions he gave to his wife and his brother-in-law, but on the assumption that he did so I am of the

opinion that the appellant is nevertheless responsible. He gave instructions for the manufacture of sweet toddy which he of course knew would be converted by the process of nature into fermented toddy unless means were taken to arrest fermentation. These means were not taken by his brother-in-law, and the appellant is responsible under section 50 of the Excise Ordinance (No. 8 of 1912).

It is objected on the appellant's behalf first, that his brother-in-law is not his servant, and secondly, that he took all due and reasonable precautions to prevent fermentation. Section 50, however, does not use the term "servant" but the term "person in his employ", and I do not consider that these terms are for the purpose of this enactment synonymous. The class of person engaged in toddy-tapping is hardly likely to be in a position to pay anyone whom he enlists to help him in his occupation, and any helper may fairly be considered to be in his employ. As to the precautions he says he took, they did not go far enough. He could himself have lime-coated the vessel which was to be used, and the question is whether it would be unreasonable to require him to do so. I say no to that question and dismiss the appeal.

Affirmed.
