

1916.

Present: Ennis J.

JAYEWARDENE v. CHARLES DE SILVA.

376—P. C. Galle, 1,938.

Excise Ordinance—Servant of licensee of arrack distillery removing arrack without a pass—Is licensee liable?

The provisions of section 50 of the Excise Ordinance are meant for cases in which the servant was acting in the ordinary course of his duty, and, whilst doing so, transgressed some provision of the Ordinance, owing to the licensee not having taken proper precautions to prevent it. The fact that a servant of a licensee of an arrack distillery removed some arrack without a pass is not sufficient to convict the licensee.

THE facts appear from the judgment.

J. S. Jayewardene, for appellant.

Dias, C. C., for the Crown.

April 20, 1916. ENNIS J.—

In this case the accused, who is the licensee of an arrack distillery, was charged with having caused his servant Amadoris to remove some arrack without a pass.

It has been proved that Amadoris removed arrack without a pass, but I cannot see any evidence that the accused caused him to do so. Mr. Dias, for the Crown, referred me to section 50 of the Excise Ordinance, under which the holder of the licence, as well as the actual offender, is punishable if the offence has been committed by a person in his employ and acting on his behalf, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of the offence. This seems to

have been in the mind of the learned Magistrate when convicting accused, for he has held that accused produced no evidence to show that due and reasonable precautions were taken. But before accused can be expected to do this, there must be evidence that the offending servant was acting on behalf of his master. In this case there is no such evidence, but, on the contrary, a very strong presumption that he was not so acting. Amadoris was caught taking away a bottle of arrack about midnight. This does not create any presumption that he was acting on behalf of his master, but strongly suggests that Amadoris was acting in the matter for his own pleasure and on his own behalf.

In my opinion the provisions of section 50 were meant for cases in which the servant was acting in the ordinary course of his duty, and, whilst doing so, transgressed some provision of the Ordinance, owing to the licensee not having taken proper precautions to prevent it. In this case there is no suggestion that accused abetted the offence committed by Amadoris, and I am of opinion that in the circumstances of the case the master cannot be implicated under the provisions of section 50.

I accordingly set aside the conviction.

Set aside.

1916.

ENNIS J.

*Jayawardene
v. Charles
de Silva*