Present : Wood Renton A.C.J.

1913.

CHRISTOFFELSZ *v.* PERERA.

744—P. C. Negombo, 20,256.

Arrack—Excisable article—Ordinance No. 8 of 1912.

Arrack is an "excisable article" within the meaning of the Excise Ordinance, No. 8 of 1912.

THE facts appear sufficiently from the judgment.

H. J. C. Pereira, for the appellant.—The accused is charged with having in his possession two gallons of arrack without a permit. That is not an offence under Ordinance No. 8 of 1912. Section 43 of the Ordinance penalizes the possession of an excisable article. The term "excisable article" is defined in the Ordinance, but the definition does not refer to arrack. The omission is very significant, especially as the definition appears to be exhaustive and specially refers to several drinks. There is no proof that arrack is an intoxicating drug.

Garvin, Acting S.-G., for the respondent.—Though arrack is not specially referred to in the Ordinance, it is included in the terms "liquor" or "intoxicating drug." It is too late in the day to say that arrack is not an intoxicating drug.

October 30, 1913. WOOD RENTON A.C.J.—

The accused-appellant was charged in the Police Court of Negombo with having in his possession two gallons of arrack without a permit from the Government Agent, and with having thereby committed an offence punishable under section 43 (*a*) of the Excise Ordinance, 1912 (No. 8 of 1912). The Police Magistrate has convicted him and sentenced him to pay a fine of Rs. 150. Section 43 (*a*) penalizes the possession, in contravention of the Ordinance or of any rule or order made thereunder, of any excisable article. The report of the Excise Inspector, which forms the commencement of the proceedings, after referring to section 43 (*a*), concludes as follows : "*Vide* notification No. 7 of *Government Gazette* No. 6,548 of February 14, 1913." The notification referred to has, however, nothing to do with the offence with which the appellant is charged. It merely prescribes the quantity of arrack and of toddy in excess of which passes for transport shall be required. After some difficulty, which the exercise of a little care on the part of those responsible for the prosecution would have obviated, we have found the notification referred to. Under section 16 of the Ordinance the possession of an excisable article in excess of such quantity as the Governor under section 4 may declare to be the limit of sale by retail, unless under a permit, is penalized. The Governor has acted under section 4 in regard to arrack by notification No. 5 published in the *Government Gazette* for January 31 last. That notification prohibits the sale by retail of quantities exceeding one-third of a gallon of arrack to any one person at any time. The accused in the present case is alleged to have been found in possession, without a permit, of two gallons of arrack. There is evidence that he had no permit. There has been no dispute as to the quantity. The points, however, pressed in support of the appeal were these: in the first place, that the Excise Ordinance does not apply to arrack at all, inasmuch as it contains no specific mention of arrack; and in the second place, on the evidence that the accused was not found in possession of the arrack, even if it is an excisable article. The first of these grounds is, in my opinion, wholly untenable. An "excisable article" is defined as meaning and including any "liquor" or intoxicating drug as defined by the Ordinance. The term "liquor" includes all liquid consisting of or containing alcohol. The term "intoxicating drug" includes every intoxicating drink prepared from any material and not included in the term "liquor." If there were any doubt on the question whether arrack falls within the former of the definitions, it would certainly fall within the latter. The only point that remains for consideration is whether the arrack was traced to the possession of the accused. [His Lordship then discussed the facts and dismissed the appeal.]

Appeal dismissed.