

Present : De Sampayo A.J.

1912.

PERERA v. ALI TAMBY.

328—P. C. Matale, 37,719.

Is pepper "produce" ?—Ordinance No. 9 of 1885—Must produce be the produce of a "plantation" for conviction under s. 4 ?

Pepper is not "produce" within the meaning of Ordinance No. 9 of 1885.

For a conviction under section 4 of the Ordinance there must be proof that the produce in question is the produce of a plantation.

THE facts appear from the judgment.

A. St. V. Jayewardene, for the accused, appellant.—There is no evidence whatever to show that the accused knew the cooly was a "labourer." Pepper is not a produce which is contemplated by the Ordinance. There is no proof that the pepper came from the estate of the complainant.

V. Grenier, for the respondent.—The definition of "produce" in Ordinance No. 9 of 1885 is not exhaustive. The term used in the definition is "includes." Though pepper is not specially mentioned in the definition, it is proved in this case to be a produce of plantations in the district. [De Sampayo A.J.—It is more or less a wild creeper in these districts.] But it is cultivated in plantations for commercial purposes.

It is not necessary to prove that the pepper came from any particular plantation; it is enough to prove that it is a produce of plantations. The accused ought to have known in the circumstances that the cooly was a "labourer."

Cur. adv. vult.

May 17, 1912. DE SAMPAYO A.J.—

The accused has been convicted of the offence of having purchased three measures of pepper from one Carolis, a labourer employed on Spring Hill estate, an offence punishable under section 5 of the Ordinance No. 9 of 1885. Section 4 of the Ordinance which defines the offence is as follows:—"It shall not be lawful for any one to purchase or take in barter or exchange or receive any produce from any labourer employed on any plantation." It was admitted

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by counsel for the complainant-respondent that a person charged under this section must be shown to have known the vendor to be a labourer employed on a plantation. The accused is a Moorish boutique keeper at Rattota, about quarter of a mile from Spring Hill estate, and Carolis a Sinhalese man employed on the estate, but living, not in the estate lines, but on the roadside, about a quarter of a mile away. The accused bought the pepper openly in the ordinary course of business, and concealed nothing when inquiries were made. He swore that he had not known Carolis before, but the Magistrate considered this untrue. The only evidence on the point is that Carolis was seen at the accused's boutique, not only on the day in question, but on the previous day as well. However this may be, there is nothing on the record to show that the accused knew Carolis to be employed on the estate. But I need not labour this point in view of other more serious objections to the conviction in this case. For instance: Is pepper "produce" within the meaning of the Ordinance? and must it not be shown that it was "produce" of a "plantation"?

The interpretation clause of the Ordinance says "produce" shall include the fruit, &c., of any plant cultivated in a plantation, and "plantation shall include any land on which coffee, tea, cacao, cardamoms, or cinchona are growing." It seems to me that "produce" in section 4, which defines the offence, must be coffee, tea, cacao, cardamoms, or cinchona, and that pepper is not such "produce." Counsel for complainant contended that the gist of the offence was the fact of purchase from a labourer, and that it did not matter what kind of produce it was or where it came from; and further, that the offence would be committed even if the produce rightfully belonged to the labourer, say, by purchase elsewhere in the market, and was not grown on any plantation in Ceylon. I cannot accept this contention in any respect. The object of the Ordinance is stated in the preamble to be to make provision "for the protection of certain descriptions of produce," and it accordingly proceeds in the interpretation clause to mention the contemplated "descriptions of produce," and pepper is not one of them. Moreover, the "protection" intended is not secured by prohibiting all dealings with labourers, but by penalizing within certain limits any dealings with labourers with reference to the produce of plantations. In this case there is no proof whatever that the pepper in question came from any plantation, and much less from Spring Hill estate. It is not even said that there was any loss of pepper on the estate at this time.

For these reasons I am of opinion that the prosecution wholly failed, and the accused was entitled to be acquitted. I set aside the conviction and acquit the accused.

Set aside.