

1915.

Present: De Sampayo A.J.

ASPIN v. SAMSUDEEN.

436—P. C. Kandy, 6,580.

Transporting arrack without a permit—Cooly carrying six bottles of arrack belonging to three persons—Ordinance No. 8 of 1912, s. 12 (Notification No. 7).

Three persons each bought two bottles of arrack, and gave the six bottles to the accused, a cooly, to carry. The accused had no permit.

Held, that the accused was guilty of an offence under section 12 of the Excise Ordinance (Notification No. 7).

THE facts are set out in the judgment.

Bawa, K. C., Acting S.-G., for the appellant.—The acquittal was wrong. It has been held that *mens rea* is not necessary for a conviction for possessing excisable article in contravention of the section. If the fact that the arrack was the property of three persons was a sufficient defence, it would not be possible to work the section.

No appearance for respondent.

Cur. adv. vult.

June 11, 1915. DE SAMPAYO A.J.—

This is a prosecution under section 43 (a) of the Excise Ordinance, No. 8 of 1912, for transporting without a permit six bottles of arrack, in contravention of section 12 of the Ordinance and Notification No. 7 issued thereunder. The accused was caught in the act of carrying six bottles of arrack at Hantana road. His explanation was that three persons had each bought two bottles of arrack at the Castle Hill tavern and had given him all the six bottles to be taken to Earyagala estate. The three persons, whom he named and called as his witnesses, appear to be brothers or cousins, and the arrack was bought for the purposes of a social ceremony at the house of one of them, who is a kangany on the estate. All the arrack was bought at the same time, and was to be taken to the same place. The Police Magistrate, however, held that, as the arrack belonged to three persons equally, the rule which prohibited the transport of arrack in excess of one-third of an imperial gallon was not contravened, and acquitted the accused, whom he considered to be a simple cooly and ignorant that he was doing anything wrong. The Attorney-General has appealed.

In my opinion the ownership of the arrack has nothing to do with the particular charge made against the accused. The act of transporting under certain circumstances itself constitutes the offence,

and it does not matter whether the quantity so transported was originally purchased by one person or by several. To hold otherwise would be to permit persons, who are so minded, easily to defeat the intention of the Legislature by pretending to buy each a small quantity but on the whole exceeding the limit. Nor is guilty knowledge required in this class of cases. Ignorance is not an excuse, though it may affect the amount of punishment.

The order of acquittal is set aside. The accused is convicted on the charge made against him, and is sentenced to pay a fine of Rs. 5, and in default of payment to undergo simple imprisonment for a period of seven days.

Set aside.

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DE SAMPAYO
A.J.

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Samsudeen*

