

*Present:* Ennis and Porter JJ.

1922.

CHELLIAH *v.* SOOSE.

163—*D. C. Mannar, 9,179.*

*Contract—Agreement by tavern-keeper to give Re. 1 per gallon to renter—  
Contract supply system—Impossible to make profit of Re. 1 if  
arrack was sold at the price fixed by Government—Is contract  
illegal?*

A tavern-keeper agreed to pay the renter Re. 1 per gallon of arrack sold at the tavern. If the tavern-keeper sold the arrack at the price fixed by the Government, he could not have made a profit of Re. 1 per gallon.

*Held*, that the agreement was void as against public policy.

**T**HE defendant respondent was employed by the plaintiff-appellant as a paid servant to sell arrack. Among other things it was agreed between the plaintiff and the defendant (a) that the defendant should pay to the plaintiff Re. 1 as profit on every gallon of arrack sold by the defendant; (b) that the defendant should keep regular accounts, and should conform to the rules of the Excise Department.

1922.  
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 Soose

The defendant having failed to render proper account, the plaintiff brought this action for Rs. 490, of which Rs. 349.10 was the amount of profit at the rate of Re. 1 per gallon.

The defendant denied in his answer that any amount was due to the plaintiff, and specially denied that there was any agreement to give Re. 1 as profit to the plaintiff on every gallon of arrack sold. The District Judge held that it was impossible to make a profit of Re. 1 per gallon without an infringement of the Excise regulations, and dismissed plaintiff's action.

*Pereira, K.C.* (with him *H. V. Perera* and *S. Rajaratnam*), for the plaintiff, appellant.

*Arulanandan* (with him *J. Joseph*), for the defendant, respondent.

November 9, 1922. ENNIS J.—

The only question on appeal in this case was whether an agreement to pay Re. 1 per gallon of arrack sold in an arrack tavern was legal as between the renter and the tavern-keeper. The learned Judge has found that the tavern-keeper, if he sold the arrack at the price fixed by the Government, could not make Re. 1 per gallon profit, and he, therefore, held that the agreement was void as against public policy, and to that extent dismissed the plaintiff's action.

On appeal it was urged that there was no evidence to show that Re. 1 per gallon profit could not be made legitimately. The plaintiff gave evidence as to the price at which he purchased the arrack, and it appears to have been accepted throughout the case and in the petition of appeal that by selling the arrack at the price fixed by Government, Re. 1 per gallon, profit could not be made. I am unable, therefore, to say that the learned Judge's finding in this respect is wrong.

There remains to be considered whether this is an agreement which would be void as against public policy. The agreement would seem to be one which had for its object the collection of more profit than allowed within the price fixed under the Excise regulations; and in that respect it was one which was likely to defeat the provisions of the Excise Ordinance. I am, therefore, of opinion that the learned Judge was right in holding that the agreement in question was void.

I would accordingly dismiss the appeal, with costs.

PORTER J.—I agree.

*Appeal dismissed.*