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*Present : Akbar J.*

INSPECTOR OF EXCISE, COLOMBO v. PETER.

*1—P. C. Colombo, 5,446.*

*Excise Ordinance—Licence to sell liquor on ground floor of premises—  
Storage of liquor in first floor—Unlawful possession—Ordinance  
No. 8 of 1912, s. 45 (c).*

Where a person who was licensed to sell foreign liquor on the  
ground floor of certain premises stored liquor in the upper floor,—

*Held*, that he was in possession of liquor in breach of general  
condition No. 27 applicable to Excise licences.

**A** PPEAL from a conviction by the Police Magistrate of Colombo.

*Soertsz* (with *Ranawake*), for accused, appellant.

*Schokman, C.C.*, for complainant, respondent.

March 15, 1930. AKBAR J.—

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The accused was convicted by the Police Magistrate of the offence of possessing foreign liquor in the upstairs portion of building No. 26, Kayman's gate, which was a place other than the place referred to in his licences, in breach of condition 27 of the general conditions applicable to Excise licences, punishable under section 45 (c) of the Excise Ordinance, No. 8 of 1912.

As the offence was nothing more than a mere technical offence, no punishment was passed on him, but according to the record he was "admonished." I agree with the Magistrate that this is a trivial offence and no punishment is called for. But Counsel for the appellant strenuously argued that the conviction was wrong in law.

The accused owns two licences, one a wholesale licence for the sale of foreign liquor and the other a retail licence. In both these licences he was authorized to sell foreign liquor "at the premises more fully described below, in the premises No. 26, Kayman's gate . . . . .," subject to the general conditions applicable to all Excise licences and certain special conditions, which are of no importance to this appeal. At the bottom of these licences before the signature of the licensing authority we find these words "ground floor 26 feet 6 inches by 15 feet 2 inches; bounded, north by Main street, east by No. 25, Kayman's gate, south by wall of premises, and west by house No. 27, Kayman's gate. There can be no doubt at all that the only place referred to in these two licences where the accused was authorized to sell foreign liquor was the ground floor of No. 26, Kayman's gate. The building is an upstairs building with one storey above the ground floor, and the foreign liquor belonging to the accused was stored in this upper floor. The prosecution argued that this storage of the liquor in the upper storey was a violation of condition 27 applicable to all Excise licences.

Condition 27 is as follows:—

The possession (save under and in accordance with the law applicable to unlicensed persons) or sale by any licensee of any excisable article elsewhere than at the premises to which his licence refers is prohibited.

The Police Magistrate has convicted the accused, because under section 14 (e) no warehouse can be worked without a licence. He was of opinion after consulting the Oxford English Dictionary that the upper floor of No. 26, Kayman's gate, was a warehouse, which required a special licence. I do not agree with his reasons, because by section 15 (1) (b) what the legislature meant by a warehouse is

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clearly indicated. Apart from this, the accused was not charged with a breach of section 14 (e) of the Excise Ordinance. The Police Magistrate seems to have forgotten that the charge against the accused was a breach of the general condition 27 punishable under section 47 (c). Although the Magistrate has gone wrong on this point, yet it is open to me to see whether the conviction can be justified on the charge laid in the plaint. Mr. Soertsz argued that the premises referred to in the licences are the whole of No. 26, Kayman's gate. But as I have already pointed out, the particular place where the accused was authorized to sell under the licences was described as the "ground floor," clearly distinguishing the ground floor from the first floor. Mr. Soertsz argued that a strict reading of the words "ground floor" would seem to indicate that the accused could only sell liquor on the surface of the floor and nowhere above it. This is an interpretation which no reasonable man would adopt. I do not think this interpretation is correct because the words "ground floor" when used with reference to buildings, clearly mean the whole room on the ground floor. We often find advertisements stating that the ground floor or the first floor is to let. This does not mean that only the area of the ground floor or the first floor is to be let. Any person would infer from such an advertisement that a certain room or rooms on the ground floor or on the first floor is or are to be let. It seems to me, therefore, that when the accused stored the liquor on the first floor he was committing a breach of general condition 27. Mr. Soertsz then argued that general condition 27 did not apply to the accused's case. I cannot see how he can say this when the licences of the accused clearly stated that they were subject to the general condition applicable to all Excise licences. Then Mr. Soertsz argued that general condition 27 was *ultra vires* so far as licensed vendors were concerned and he based his argument on section 16 of Ordinance No. 8 of 1912. Section 16, however, does not apply to licensed vendors, and therefore so far as licensed vendors are concerned we must look to the other sections of the Ordinance which are applicable to them. Section 24, paragraph (d), says that every licence is to be in such form and contain such particulars as the Governor may direct generally or in any particular instance. General condition 27 was made by the Governor under section 24 and will, therefore, bind the accused. I think that the conviction was right but not for the reasons given by the Police Magistrate. The appeal is dismissed.

*Affirmed.*