

1914.

Present: Pereira J.

PAULICKPULLE *v.* PEDRICK.

458—*P. C. Colombo, 46,305.*

Arrack—Excisable article—Ordinance No. 8 of 1912—“ Bottle ” not standard measure.

In a prosecution under the Excise Ordinance for the illicit sale of an excisable article, where the alleged excisable article was described by the witnesses as arrack, they must be presumed to have meant “ arrack ” in the ordinarily accepted signification of that term in the English language, that is to say, an ardent liquor distilled from the juice of, *inter alia*, the coconut palm. Arrack in that sense is an excisable article under the Ordinance.

In order to support a conviction under the Ordinance for the illicit possession of arrack, there should be clear proof that the quantity possessed exceeded a third of a gallon.

THE facts appear from the judgment.

Bawa, K.C., for accused, appellant.—There is no evidence to show that what the accused sold is an “ excisable article. ” The complainant speaks of “ arrack. ” “ Arrack ” is not an “ excisable article, ” and possessing arrack is not punishable. Excisable article is defined, but arrack is not mentioned in the definition.

The accused cannot be convicted for being in possession of an excisable article over a gallon ; the evidence is that he had eight bottles, the size of the bottles is not indicated.

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Canekeratne, C.C. (with him *van Langenberg, K.C., S.-G.*), for the respondent.—Arrack is an excisable article. See *Christoffels v. Perera*.¹ It follows also from the Excise Notification of January 29, 1913, whereby the possession of more than a third of a gallon of arrack is prohibited, that arrack is an excisable article within the meaning of the Ordinance.

The eight bottles were produced before the Magistrate, and he was satisfied that they contained more than one-third of a gallon. The accused never contested this fact in the lower Court.

Cur. adv. vult.

June 16, 1914. PEREIRA J.—

The accused has been convicted of two offences, which are set forth in the formal conviction sheet as follows: (1) Possessing eight bottles of arrack in excess of the quantity prescribed in section 16 of Ordinance No. 8 of 1912, and Excise Notification 5 made under section 4 of Ordinance No. 8 of 1912 ; and (2) selling an excisable article, to wit, arrack, in contravention of Ordinance No. 8 of 1912. As regards the first act mentioned above, it appears to me to be no offence at all under the Ordinance, and I shall deal with it later. As regards the second act, it has been contended that there is nothing to show that arrack is an excisable article, as it is not mentioned or defined in the Ordinance as an excisable article. No doubt the Ordinance makes no mention of arrack, but the expression " excisable article " is defined to mean, *inter alia*, any " liquor as defined by the Ordinance," and " liquor " is defined by the Ordinance to mean, *inter alia*, all liquid containing alcohol. The witnesses speak of the thing alleged to have been sold by the accused as arrack, and it has been argued that there is no evidence to show that the substance alleged to have been sold answers to the description of " excisable article " as defined by the Ordinance. It seems to me that the best evidence that the substance answers to that description is that it is referred to by the witnesses as " arrack. " Of course, a person may be so familiar with arrack as to be able to say, judging from the mere appearance, taste, or smell of a given liquid, that it is arrack. The term " arrack, " whatever its derivation may be, has now passed as a word into the English language. It occurs in every English dictionary, and its meaning is given as " an ardent spirit used in the East procured from the fermented juice extracted from the flower of the coco and other palms as well as from rice and jaggery. " Now, under section 57 (9) of the Evidence Ordinance, the Court is required to take judicial notice of the meaning of English words. That being so,

¹ (1913) 17 N. J. R. 177.

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when the witnesses in giving evidence used the word " arrack, " it was not necessary that they should at the same time say what they meant by it. The Court was bound to understand it in its ordinary sense and meaning. It was not even necessary that the Court should know how " arrack " was obtained or distilled. So long as the word meant an ardent spirit, that is to say, a distilled alcoholic liquor, it was an excisable article under the Ordinance.

There is, in my opinion, sufficient evidence in the case to show that the accused sold arrack, and I see no reason to disturb the conviction under section 43 (h) of the Ordinance.

As regards the offence of possessing an excisable article, the conviction is of possessing " eight bottles of arrack in excess of the quantity prescribed, " but the evidence is that no more than eight bottles were found in the possession of the accused. Under section 16 of the Ordinance, and His Excellency's notification under section 4, dated 29th January, 1913, a person is entitled to possess without a license any quantity of arrack not exceeding a third of a gallon. Now a " bottle " is not a standard measure. It merely means a hollow vessel of a particular shape for holding liquids. It may be of any size, and there is nothing to show that possessing eight bottles is by itself an offence. The arrack alleged to have been found in the possession of the accused does not appear to have been duly measured, and, as contended by the accused's counsel, there is nothing to show that the accused possessed a quantity exceeding a third of a gallon. The Excise Inspector says: " He is allowed to possess a third of a gallon without a permit. That is equivalent to bottles. " I can make nothing of this evidence. Even had he mentioned the number of bottles that he had in mind, there was nothing to show that he meant bottles of the size of those alleged to have been found in the possession of the accused.

I set aside the conviction under section 43 (a) of the Ordinance, affirm the conviction under section 43 (h), and reduce the sentence to a fine of Rs. 100. (Two weeks' rigorous imprisonment in default.)

Varied.