

For the Defendants it is pointed out that the house was built to replace one which had passed with the land under Arthur Harman's Will; that Mrs. Harman remained in the house until her death: and that while it is true that she purported to dispose of it by her Will, she gave it to that member of the family who cultivated the estate; and that from that very fact it is to be inferred that the object and purpose for which the house was built was to provide a dwelling house on the estate to be occupied by the person who was cultivating the estate; and that there is nothing in evidence to suggest that Mrs. Harman ever contemplated that the house should be removed elsewhere.

These considerations, in my view, outweigh anything that can be urged on behalf of the Plaintiff, and I hold that he has failed to make good his claim.

On the first issue before the Court, I hold that the owners of the dwelling house at the date of the sale were the Defendants.

The second issue, therefore, does not arise.

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### BISHNATH *ats.* POLICE.

[Appellate Jurisdiction (Corrie C.J.) July 15, 1943.]

*Distillation Ordinance 1877<sup>1</sup>—s. 37—Analyst's Certificate—whether certificate admissible if full statement of ingredients not supplied—whether prosecution obliged to permit defence to make analysis before trial—ss. 23 & 14—whether illicitly distilled liquor is liquor on which the full duty has not been paid.*

**HELD.**—(1) The analyst's certificate is admissible notwithstanding that a full statement of ingredients not set out.

(2) There is no obligation upon the prosecution before the hearing to part with any of the liquid in respect of which the prosecution was brought.

(3) The Distillation Ordinance, 1877 s. 23 is not restricted to spirits distilled under the Ordinance and the term "full duty" means "the same duties which are or may be from time to time payable upon spirits of a corresponding description and strength imported into the Colony".

[**EDITORIAL NOTE.**—(i) s. 37 of the Distillation Ordinance was amended in 1945, rendering the first point held of no further interest.

(ii) This judgment was affirmed as to the third point in *Raghubar ats. Police* [1946] 3 Fiji L.R.]

**APPEAL AGAINST CONVICTION.** The facts and arguments appear from the judgment.

*P. Rice* for the Appellant.

*A. G. Forbes*, for the Respondent.

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<sup>1</sup> *Cap.* 193.

CORRIE, C.J.—This is an Appeal against a Judgment given on 27th October, 1942, by the District Commissioner Nandi, whereby the Appellant, Bishnath, was found guilty of unlawfully, knowingly disposing of spirits, to wit, one bottle of distilled spirits upon which the full duty had not been paid, contrary to s. 23 of Ordinance 8 of 1877.

S. 23 is in the following terms:—

“Any person who shall knowingly sell or otherwise dispose of or knowingly permit the sale of or disposal of or knowingly purchase any spirits upon which the full duty shall not have been paid excepting spirits in bond shall upon conviction be liable to the same penalties and imprisonment as provided in the preceding section of this Ordinance.”

The first ground of appeal is that there was no evidence before the Court proving the disposal of spirits within the meaning of the Distillation Ordinance 1877. The Appellant's argument is that the analyst's certificate, upon which the judgment is based, was not admissible in evidence, in that it did not comply with the requirements of s. 37 of the Ordinance. The Section reads as follows:—

“In any proceedings under this Ordinance a certificate purporting to be signed by a Government analyst stating the ingredients contained in any liquid submitted for his examination shall be admissible in evidence for all the purposes of this Ordinance.”<sup>1</sup>

The Certificate submitted by the Government Analyst is in the following terms:—

“I am of opinion that the sample contained the ingredients as under—  
This is distilled liquor containing 34.01 per cent proof spirit.”

The Appellant argues that, in order to be admissible in evidence, the Certificate must state the whole of the ingredients contained in the sample, whereas the Certificate in this case only mentions “proof spirit.”

It certainly appears that the intention of s.37 is that the certificate should contain a full statement of the ingredients, and a certificate which does not do so is to that extent defective. It does not follow, however, that it is inadmissible in evidence and I hold that in so far as it does contain a statement of ingredients, it may be admitted.

In the present case, the certificate states that the sample contained 34.01 per cent proof spirits. There is no definition either in the Distillation Ordinance or elsewhere in the law of this Colony of the term “proof spirit”; but it is defined in the *Oxford Dictionary* to mean “the standard of strength of distilled alcoholic liquors (or vinegar), now the strength of a mixture of alcohol and water having a specific gravity of 0.91984 and containing 0.495 of its weight or 0.5727 of its volume of absolute alcohol.” It appears, therefore, that the meaning of the certificate is that the sample was a distilled mixture of alcohol and water in the proportions stated, and this was an adequate certificate for the purpose of the case.

The Appellant's second and third grounds of appeal were as follows—

(2) that even if there were such evidence, it was not proved that such spirits were “distilled in accordance with the provisions of this Ordinance,” within the meaning of those words as set out in s. 14 of the Ordinance;

(3) that no duty was payable on any alleged spirits the subject matter of the case. The Appellant's argument is that as the spirits in respect of which he was charged were illicitly distilled, they were not liable to duty under s. 14 of the Ordinance; and hence that it would not be held that they were spirits in respect of which the full duty had not been paid.

<sup>1</sup> *Vide Editorial Note.*

S. 23, however, is not restricted in terms to spirits distilled under the Ordinance which in s. 22 provides penalties for illicit distillation; and it is clear that the term "the full duty" in s. 23 means, in the words of s. 14, "the same duties which are or may be from time to time payable upon spirits of a corresponding description and strength imported into the Colony."

The fourth ground of appeal is that, having regard to the refusal of the prosecution to allow the Appellant to analyse or to have analysed a sample of the liquor alleged by the prosecution to have been spirits within the meaning of the Ordinance, the prosecution's evidence relating to such analysis ought to have been rejected.

The Appellant argues that the spirits the subject of the case stood in the same position as a statement made to the police by a witness whom it was intended to call for the prosecution.

Clearly the refusal by the police to deliver any part of the spirits to the Appellant is not a ground for rejecting the evidence submitted by the prosecution as to the contents of the sample analysed. The Appellant, if he is not satisfied with the certificate of the Government Analyst is entitled to have him called to give evidence: and if he so desires, is also entitled to have a sample analysed by an analyst chosen by him, and, for this purpose, to ask for an adjournment of the hearing. But just as there is no obligation in law upon the prosecution to permit the Defence to inspect the statements of witnesses before they are called to give evidence, there was equally no obligation upon the prosecution before the hearing to part with any of the liquid in respect of which the prosecution was brought. The Appeal must be dismissed.

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### HASRATH *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) July 15, 1943.]

*Distillation Ordinance 1877—s. 22<sup>1</sup>—interpretation—whether utensils for distilling ejusdem generis with a stillhead or worm—penalty originally fine only—substituted fine and imprisonment by Defence (Amendment) Regulation 1942—Provision of s. 34 of Distillation Ordinance that "all penalties and forfeitures under this Ordinance shall be recovered before the District Commissioner"—whether Magistrate had jurisdiction to impose imprisonment.*

Appellant was convicted in the Magistrates Court, Lautoka, on a charge of having upon his premises utensils for distilling contrary to section 22 of the Distillation Ordinance, 1877. The utensils in evidence comprised three drums, a bucket and a bowl. After conviction and before sentence the District Commissioner put a question to the Superintendent of Police who thereupon stated that there were soldiers in the locality and Appellant was sentenced to a fine and imprisonment.

<sup>1</sup> Cap. 193. Revised Edition Vol. III page 2260.