

MEHAR SINGH *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) August 10, 1937.]

*Distillation Ordinance 1877*¹—s. 22—*having on premises spirits upon which full duty has not been paid*—s. 37—*analyst's certificate not stating full ingredients of sample—whether admissible*—s. 28 *spirits not seized for any cause of forfeiture—burden of proof as to payment of duty.*

In a prosecution for an offence contrary to s. 22 of the Distillation Ordinance 1877 an analyst's certificate stating only the percentage of alcohol in the sample analysed was admitted in evidence. The prosecution tendered no evidence to prove that the full duty had not been paid on the spirits.

HELD.—(1) An analyst's certificate which purports to be a certificate of the ingredients contained in the sample submitted is admissible under s. 37 of the Distillation Ordinance, 1877, and if it is defective in that all the ingredients are not stated, this is not a ground for refusing to admit it, though the Court might require the certificate to be amended if the other ingredients are material.

(2) Unless it is shown, in terms of s. 28 of the Distillation Ordinance, 1877, that spirits were seized "for any cause of forfeiture" the burden of proof as to non-payment of duty lies on the prosecution.

[**EDITORIAL NOTE.**—See *Bishnath ats. Police* [1943] 3 Fiji L.R.—as to defective analyst's certificates; the question appears to be of no importance at present].

APPEAL AGAINST CONVICTION. The facts appear from the judgment.

R. D. Bagnall for the appellant.

The Acting Attorney-General, *T. T. Russell*, for the respondent.

CORRIE, C.J.—The appellant has been convicted by the Commissioner of this Court in the district of Rewa of having unlawfully upon his premises spirits upon which the full duty has not been paid, contrary to s. 22 of the Distillation Ordinance 1877; and has been ordered to pay a fine of £50 or, in default, to serve a term of one month's imprisonment with hard labour.

The appellant based his appeal upon four grounds. Upon the hearing of the appeal, however, it became evident that the substantial grounds of appeal were :—

- (1) That the certificate of the analyst as to the contents of the sample submitted to him was not admissible in evidence.
- (2) That the burden of proof as to payment or non-payment of duty was upon the Attorney-General.

The authority for the admission in evidence of the analyst's certificate is s. 37 of the Distillation Ordinance 1877, which reads :—

"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."

¹ *Cap.* 193.

The objection taken in the present case is that the certificate does not comply with the section as it does not state the whole of the ingredients of the sample submitted for analysis but only mentions one ingredient.

It was argued that without a complete analysis it would be impossible to determine under which paragraph of Item 146 of the Customs Tariff the liquid analysed would be dutiable. This argument is not without substance, as it is clear that the section contemplates a certificate which states the ingredients contained in the sample submitted : and if it was defective in that all the ingredients were not stated, that would not be a ground for refusing to admit the certificate in evidence ; though if the nature of the other ingredients were material to the case, the Court might require the certificate to be amended. In the present case the certificate that the sample contained 58.02 per cent proof spirit is sufficient.

On the question of the burden of proof, the Attorney-General relies upon s. 28 of the Ordinance which reads :—

“ If any spirits or other property shall be seized or stopped for any cause of forfeiture and any dispute shall arise as to ownership or whether the duty has been paid for the same or if any suit or action shall be brought for any non-payment of licence or other fee under this Ordinance the proof shall be upon the owner or claimant of such goods or upon the defendant in any suit for payment of any fees or duties and not on the officer who shall seize or stop such spirits or sue for such fees or duties.”

The defence argue that the present case does not fall within that section, as this is not a case in which spirits were seized “ for any cause of forfeiture ”.

The charge is laid under s. 22 and that section, while imposing a penalty upon a person upon whose premises shall be found any spirits upon which the full duty has not been paid, does not authorise the forfeiture, or indeed the seizure, of spirits so found.

S. 25, it is true, authorises the seizure and forfeiture of spirits found upon any premises illegally used as distillery ; and s. 21 directs that all spirits removed from the premises of any distillery without a permit, unless the duty on such spirits shall have been paid before such removal, shall be seized and forfeited.

In the present case, however, there is no evidence to show that either of these sections applied.

I therefore hold that upon the evidence before the Court, it has not been shown that the spirits were seized “ for any cause of forfeiture ” and hence that the prosecution were not entitled to rely upon s. 28, and in consequence the burden of proof as to payment of the duty did not lie upon the appellant.

As the prosecution brought no evidence to prove non-payment the conviction must be quashed and the appellant acquitted. No order is made as to costs.