

In support of this argument, the Appellants' Counsel relies upon the case of *Hamilton v. Walker* 61 L.J.M.C. 134. The facts in that case, as set out in the head note, were as follows:—

The appellant was charged by two Informations with two offences under s. 3 and 4 of the Indecent Advertisements Act, 1888, at the same time and place the evidence being substantially the same in both cases. Upon the conclusion of the hearing of the first Information the Justices reserved their decision until they had heard the charge contained in the second Information and having done so, proceeded to convict the appellant on both charges, and sentenced him to a separate term of imprisonment on each charge. The convictions were quashed.

I see no ground upon which the present case can be distinguished from that case and it follows that the appeal must be allowed and the convictions of the Appellants on both charges quashed.

In the record of the proceedings before the District Commissioner, they are described as having taken place in "the Police Court." This is incorrect, as no such Court exists.

KALLU SINGH *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) August 5, 1943.]

*Distillation Ordinance 1877*¹—s. 22—*having on premises spirits upon which full duty not paid*—s. 37—*whether statement in analyst's certificate is evidence of local manufacture*—s. 28—*cause of forfeiture—mens rea—onus of proof.*

Kallu Singh occupied a house at Yalalevu, Nadi, with his wife and members of his family. Two bottles which, according to evidence, contained a liquid which "smelt like bush liquor" were found in one room, while on the kitchen stove were found two tins containing a mash—in one case bananas, rice and water, in the other maize, dhal, and water. Government Analyst's certificates were put in which, in addition to stating the ingredients of four samples, stated that two samples were "a distilled liquor of local manufacture" and two were "liquor in the course of manufacture". These portions of the certificate were objected to.

HELD.—(1) Statements in an Analyst's certificate other than statements of ingredients do not come within s. 37 of the Distillation Ordinance, 1877 and are not evidence.

(2) In proceedings under s. 22 of the Distillation Ordinance, 1877 the burden of proof as to matters referred to in s. 28 of the Ordinance is upon the defendant.

(3) Knowledge is not an essential element of the offence under s. 22 of the Distillation Ordinance 1877—"Any person upon whose premises shall be found any spirits etc."

¹ *Vide Distillation Ordinance Cap. 193 Revised Edition Vol. III p. 2255.*

[**EDITORIAL NOTE.**—The decisions (1) and (2) above were rendered obsolete by virtue of an amending Ordinance of 1945—vide relevant sections (ss. 28 and 37) of the Distillation Ordinance, Cap. 193. S. 28 of the Ordinance of 1877 was as follows:—

“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 of 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.”

S. 37 of the Ordinance of 1877 was as follows.

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

APPEAL AGAINST CONVICTION. The argument fully appears from the judgment.

P. Rice, for the Appellant.

A. G. Forbes, for the Respondent.

CORRIE, C. J.—This is an appeal against a judgment of the Magistrate's Court, Ba, given on the 26th October, 1943, whereby the Appellant was convicted of having on his premises spirits upon which the full duty had not been paid, contrary to s. 22 of the Distillation Ordinance 1877, as amended by s. 2 of Ordinance 19 of 1938.

The Appellant was sentenced to pay a fine of £75, or in default, to serve a term of 2 months imprisonment with hard labour.

The first ground of appeal is that there was not evidence before the Magistrate's Court that the full duty had not been paid upon the spirits seized.

The Appellant argues that the statements in the analyst's certificates that the liquor analysed was “of local manufacture” do not come within the terms of s. 37 of the Distillation Ordinance 1877, and hence are not evidence. This argument appears to be well founded. It is only “the ingredients” which can be proved by certificate under the section.

The Appellant further argues that there was no other evidence before the Court that the full duty had not been paid and that the Court should therefore have dismissed the charge at the close of the prosecution case. He argues that s. 28 does not apply, as “cause of forfeiture” in that section means “reason for forfeiture”, and that such was not the object of the seizure in this case.

It must be noted, however, that under the addition to s. 22 added by s. 2 of Ordinance 19 of 1938, spirits upon which the full duty has not been paid are to be forfeited: hence it seems difficult to argue that there was not a cause of forfeiture.

Further, in determining the appeal, this Court has to look at the whole of the evidence. If duty had been paid, the Appellant had only to produce evidence of payment to secure acquittal. This he made no attempt to do. There was, moreover, evidence from which the Court might infer that spirits were being distilled on the premises.

The next ground of appeal is that it should have been proved that the Appellant had guilty knowledge of the fact that the spirits seized were on his premises. Here, however, the exact wording of the section must be noted. The section makes it an offence knowingly to supply the materials for making or working any unlicensed still: but knowledge is not made an essential element in any of the other offences set out in the section. The effect of the section, therefore, is that the law places upon the occupier of any premises the duty of making sure that there are no spirits upon the premises on which the full duty has not been paid, and penalises any failure on his part to discharge that duty.

I am unable to hold that the findings were either unsupported by evidence or against the weight of evidence.

The appeal is dismissed.

DAYAL PARSHOTAM v. SHAHBAZ KHAN.

[Civil Jurisdiction (Corrie, C.J.) October 8, 1943.]

Agreement for sale and purchase—provision for payment of principal and interest by instalments—whether purchaser entitled to pay balance of principal otherwise than as provided in the agreement.

By an agreement for sale and purchase dated November 28, 1934, Parshottam agreed to make weekly payments of £10 to Shahbaz Khan and, in addition, monthly payments of £8 the payments to be applied in payment of interest and rates and the balance in reduction of the principal sum in the manner set out in the agreement, and to continue until the whole of the purchase price had been paid off. There was no provision for payment of the balance of purchase price in any other way. The balance of purchase price at the date of the agreement was £4,964 and it was computed by a chartered accountant for the purposes of this action that the final payment would be on 6th July, 1946. Parshotam offered to pay off the full balance on several occasions but the vendor refused to accept such payment.

HELD.—The purchaser under an agreement for sale and purchase providing only for payment of the purchase price by instalments is not entitled to make payment in any other way.

Cases referred to:—

(1) *Re Davies ; Ex parte the Equitable Investment Company Limited* [1898] 77 L.T. 567.

(2) *Rutherford v. Walker* [1907] 8 W.L.R. 52 ; 40 Dig. 117. (CAN).

ORIGINATING SUMMONS for the determination of the following questions:—

1. Whether the Plaintiff under the terms of a certain Agreement dated the 28th day of November 1934 between him and the Defendant for the purchase of the land and premises known as Section "A" Toorak