

This, however, was a perfectly proper course for the Magistrate and the Superintendent to take, in accordance with the judgment of the Court of Criminal Appeal in *R. v. Campbell* 6 Cr. Ap. 132.

If the Superintendent's statement had been incorrect, the Appellant or his Counsel could have intervened. The sentence imposed in the Magistrate's Court is set aside and the Appellant will pay a fine of £25 or, in default will serve a term of four months' imprisonment with hard labour.

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### GOIND REDDY & OR *ats.* POLICE.

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

*Two informations heard together—no consent of defendants—whether an irregularity.*

Appellants were charged jointly on two separate informations with offences against the Liquor Ordinance 1932. Evidence on both charges was heard together without the consent of the appellants.

**HELD.**—Hearing of evidence on two separate informations at the one time is an irregularity for which the convictions must be quashed.

[**EDITORIAL NOTE.**—At the date of this judgment the Summary Jurisdiction Procedure Ordinance 1876 was in force: s. 4 of that Ordinance provided that an information or complaint shall be "for one offence only and not for two or more offences". This difficulty is removed by s. 123 of the Criminal Procedure Code.]

Cases referred to :—

(1) *Hamilton v. Walker* [1892] 2 Q.B. 25 ; 61 L.J.M.C. 134; 67 L.T. 200; 56 J.P. 583 ; 17 Cox. C.C. 539; 8 T.L.R. 531; 33 Dig. 346.

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

*P. Rice* for the Appellants.

*A. G. Forbes* for the Respondent.

**CORRIE C. J.**—On 26th October, 1942, the Appellants were brought before the District Commissioner, Nadi upon two informations. In the one Information they were charged with on 26th September, 1942, unlawfully carrying liquor, contrary to s. 42 of Ordinance 25 of 1932; while in the other Information they were charged with on 26th September, 1942, unlawfully being in possession of liquor, they being Indians, contrary to s. 65 of the same Ordinance. The Court, without obtaining the Appellants' consent to that course, heard the evidence upon both charges at the same time and found both appellants guilty upon the two informations.

On behalf of the Appellants it is argued that this course was irregular and that the convictions upon both charges must be quashed.

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.

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### KALLU SINGH *ats.* POLICE.

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

*Distillation Ordinance 1877*<sup>1</sup>—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."

<sup>1</sup> *Vide Distillation Ordinance Cap. 193 Revised Edition Vol. III p. 2255.*