

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.

HASRATH *ats.* POLICE.

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

Distillation Ordinance 1877—s. 22¹—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.

¹ Cap. 193. Revised Edition Vol. III page 2260.

HELD.—(1) The words “or other utensils for distilling whatsoever” are not to be construed *ejusdem generis* with the words “any unlicensed still or any stillhead or worm.”

(2) In determining the jurisdiction of a District Commissioner under the Distillation Ordinance the Court must look to that Ordinance (and not solely to the Summary Jurisdiction Procedure Ordinance.)

(3) It is proper for the Magistrate to obtain information relevant to sentence from the Police after conviction and before passing sentence.

[**EDITORIAL NOTE.**—Defence (Amendment) (No 66) Regulations, 1942 are no longer in force but s. 22 of the Distillation Ordinance (Cap. 193) has been amended to provide for a fine and imprisonment. Furthermore s. 34 of the original Ordinance, here held to limit the jurisdiction of the District Commissioner to punishment by fine, is no longer in force—vide Cap. 193 s. 31 for jurisdiction of a Magistrate as to forfeiture.

The general issue as to whether a Magistrate’s jurisdiction is to be sought in the Ordinance creating the offence and providing the punishment is subject to the following observations:—

(a) By virtue of s. 71 of the Magistrates Courts Ordinance, Cap. 3 where in any existing Ordinance etc. the term “District Commissioner” or “District Commissioner’s Court” is used in relation to a Court or judicial proceeding there shall be substitute for such term the term “Magistrate” or “Magistrate’s Court” as the case may be. This section does not appear in Cap. 3 but has been given effect to in the revision of the laws.

(b) The Summary Jurisdiction Procedure Ordinance 1876 is repealed. S. 4 was as follows:—

“Wherever in any Ordinance regulation or rule heretofore passed
“ or made or hereafter to be passed or made it is enacted that any
“ conviction or order may be made or enforced or any fine penalty
“ forfeiture or term of imprisonment imposed or inflicted the pro-
“ ceedings shall unless it be otherwise specially provided or except
“ in the case of an indictable offence be taken and had in a
“ summary manner under this Ordinance.”

The corresponding legislation as to the jurisdiction of Magistrates is in the Criminal Procedure Code (Cap. 4) s. 4-9 (Revised Edition Vol. I page 65).]

Cases referred to :—

- (1) *Hakim Khan ats. Police* [1943] 3 Fiji L.R.
(2) *R. v. Campbell* [1911] 6 Cr. Ap. 131; 27 T.L.R. 256; 14 Dig. 332.

APPEAL AGAINST CONVICTION and sentence. The facts appear from the judgment.

P. Rice for the Appellant.

A. G. Forbes for the Respondent.

CORRIE, C. J.—This is an Appeal against a judgment given on 16th December 1942 in the Magistrate’s Court, Lautoka, whereby the Appellant Hasrath was found guilty upon an Information charging him with, on 8th October, 1942, having upon his premises utensils for distilling, contrary to s. 22 of the Distillation Ordinance 1877.

The first and second grounds of appeal are as follows:—

“ 1. That there was no proof that the said utensils were for the purpose of or were used for distilling and that the only evidence before the Court was that the said utensils could be built up and put together in such a way that they could be used for distilling.”

“ 2. That the words ‘or other utensil for distilling whatsoever’ in section 22 of the Distillation Ordinance 1877 should be construed *ejusdem generis* with the words ‘any unlicensed still or any stillhead or worm’ and that the said utensils consisting of three drums a bucket and a bowl as found do not constitute a still nor are they *ejusdem generis* with a stillhead or worm.”

I hold that there was evidence before the Magistrate upon which he could find that the utensils in respect of which the Appellant was charged were utensils for distilling within the meaning of the section.

The Appellant further argues that the sentence imposed was illegal and excessive.

S. 22 provides that a person found guilty thereunder should upon conviction “be liable to a penalty not exceeding £200 nor less than £50, or to imprisonment with or without hard labour not exceeding six months nor less than one month.” By s. 2 of the Defence (Amendment) (No. 66) Regulations 1942 it was provided that there should be substituted the words “be liable to a fine not exceeding £200 or to imprisonment with or without hard labour for a period not exceeding twelve months or to both such fine and imprisonment.”

The sentence imposed upon the Appellant was “fined £25 distress or two months I.H.L. and also to six months I.H.L. sentences to be cumulative.” The Appellant’s contention is that, having regard to the wording of s. 22 and of s.34, the Magistrate had no jurisdiction to impose a sentence of imprisonment. This argument is based upon the fact that in s. 22, as originally enacted, the term “penalty” is used as equivalent to the term “fine” and exclusive of imprisonment, while in s. 34 the jurisdiction conferred upon a District Commissioner, which is the jurisdiction at present exercised by a Magistrate, is in terms, “all penalties and forfeitures under this Ordinance shall be recovered before the District Commissioner of the District where the seizure or other circumstances supporting such seizure or forfeiture shall occur.”

The reply of the prosecution is that a District Commissioner has full jurisdiction under the Ordinance by virtue of s. 4 of the Summary Jurisdiction Procedure Ordinance¹ 1876 and that s. 34 of the Distillation Ordinance merely determines as between District Commissioners which shall have jurisdiction.

This Court, however, has already held in the case of *Hakim Khan* that the question whether a charge is triable upon Information or summarily cannot be determined solely by reference to s. 4 of the Summary Jurisdiction Procedure Ordinance and it follows that in determining the jurisdiction of a District Commissioner under the Distillation Ordinance the Court must look to the terms of that Ordinance.

The provisions of s. 34 that “all penalties and forfeitures under this Ordinance shall be recovered before the District Commissioner,” cannot be held to authorise the passing of a sentence of imprisonment. The Court therefore holds that on this ground the Appeal succeeds.

The Appellant has also taken objection to the fact that after he was found guilty but before sentence, the Superintendent of Police stated, in reply to a question by the Magistrate, that there were soldiers in the locality.

¹ *Rep. Vide Editorial Note.*

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.

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.