

## Rulings—contd.

8. The possession of more than twelve quarts of beer being *prima facie* illegal, it was for the accused to prove not only that he had possession of the beer for his private use but that he purchased it legally for his private use. *King-Emperor v. Nga Chi, Criminal Revision No. 118 of 1905, Upper Burma Rulings, 1904-06, Volume I, Excise, page 7.* Upheld in *King-Emperor v. Maung Pwa, Criminal Revision No. 16B of 1909, Full Bench, Lower Burma Rulings, Volume V, page 52.*

9. **Excisable Article.**—It is for the prosecution to prove that the liquor in the case is an excisable article. *Crown v. Nga Pva Gyi, Criminal Revision No. 1337 of 1901, Lower Burma Rulings, Volume I, page 172.*

10. **Penal Clause—Double Conviction.**—A person cannot be convicted of illegal possession as well as of illegal sale of the same spirit. *Queen-Empress v. Nga Talok, Criminal Revision No. 501 of 1885, Lower Burma Selected Judgments, Volume I, page 350.*

11. Distilling spirit and possessing the spirit obtained by such distillation are not distinct offences within the meaning of section 35, Code of Criminal Procedure, and a double sentence is prohibited by section 71, Penal Code, although under section 235 (i), Code of Criminal Procedure, separate convictions for the two offences are legal, yet it is neither necessary nor desirable to convict for possessing spirit when the manufacture is proved. *King-Emperor v. Nga San Dun, Criminal Revision No. 24 of 1904, Upper Burma Rulings, 1904-06, Volume I, Excise, page 1.* See also *Queen-Empress v. Aw H'a and one, Criminal Revision No. 69 of 1900, Full Bench, Lower Burma Rulings, Volume I, page 33.*

12. **Sentence.**—The addition of an order of confiscation to a sentence does not render appealable a sentence otherwise not appealable. The order of confiscation is not part of the sentence. *Queen-Empress v. Tagarajan, Criminal Revision No. 125 of 1900, Lower Burma Rulings, Volume I, page 3.*

13. Section 32—**Cocaine Drugs.**—It is for the prosecution to prove that alleged cocaine is in fact cocaine drugs. *Ah Lok and another v. King-Emperor, Criminal Appeal No. 288 of 1906, Lower Burma Rulings, Volume III, page 216.*

14. Section 37—**Illicit Excisable Article.**—In a District in which the Law does not prohibit or place any restriction upon the manufacture of *tari* it cannot be unlawfully manufactured and section 37 does not therefore apply to the possession of *tari* manufactured in such a district. *King-Emperor v. Nga Po Kyan, Criminal Revision No. 76 of 1918, Upper Burma Rulings, Volume III, page 86.*

15. Section 41 (h)—**Rule 19 (5).**—"dispose of" To "dispose of" means a disposition in the nature of a sale. To sell to a person who

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treats an European soldier is not a disposition to the soldier. *Pir Mghomed and two v. Queen-Empress, Criminal Revision No. 196 of 1900, Upper Burma Rulings, 1897—1901, Volume I, page 178.*

16. A European soldier effected a purchase of liquor through a messenger. It was held that it was only when the licensee knew that the vendee is a European soldier that he is forbidden to sell to him. *Queen-Empress v. Ah Yu and one, Criminal Revision No. 1300 of 1896, Upper Burma Rulings, 1897—1901, Volume I, page 184.*

17. Section 47 (c)—*Vessels or conveyances*.—These words must be interpreted by the Magistrate according to his discretion in each case. *Queen-Empress v. Nga Ba O and one, Criminal Revision No. 1135 of 1899, Lower Burma Printed Judgments, 1893—1900, page 632.*

18. Section 60—*Arrest*.—An illegal arrest does not necessarily invalidate a trial. *Ah Hin v. Queen-Empress, Criminal Revision No. 1046 of 1898, Upper Burma Rulings, 1897—1901, Volume I, page 182.*

19. *Searches*.—No offence is committed in obstructing an officer making an illegal search. *Queen-Empress v. Nga Nyun, Criminal Reference No. 2 of 1882, Lower Burma Selected Judgments, 1872—1892, Volume I, page 152.*

20. An accused may be convicted notwithstanding that his house was illegally searched. Persons who make a search illegally render themselves liable to be sued for damages. *Queen-Empress v. Nga Tau Aung, Criminal Appeal No. 286 of 1897, Lower Burma Printed Judgments, 1893—1900, page 369, followed by Mi Hauk v. King-Emperor, Volume IV, Lower Burma Rulings, page 121.*

21. The licensee of a shop whose servant or agent permits drunkenness in the shop is punishable under the provisions of section 50 of the Excise Act, 1896, now section 40, Burma Excise Act. *Shin Gyi v. King-Emperor, Volume 9, Lower Burma Rulings, page 81.*

22. Vinegar not being an excisable article for the purpose of section 16 or section 30 of the Burma Excise Act, any quantity of it may be possessed without a licence. But a licence to possess fermented liquor up to a specified maximum for the purpose of manufacturing vinegar does not authorize the licensee to have a quantity larger than the specified maximum in process of conversion into vinegar at any one time. *Yu Wan v. King-Emperor, Volume 9, Lower Burma Rulings, page 277.*

23. It is no offence for a restaurant keeper to procure liquor from a licensed shop at the order of a customer, and supply it to him at cost price. *Ah Kway v. King-Emperor, Volume 12, B.L.T., page 54.*

24. Under the Burma Excise Act, possession of an excisable article, in any quantity, even if it does not exceed that allowed by law, may be an offence, and in certain circumstances a man may be bound to

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account for such mere possession and if he cannot, he will be guilty of an offence under section 37 of the Act. *Nga Han Gyi v. King-Emperor*, Volume II, Lower Burma Rulings, page 134.

25. The Collector on a report from the District Superintendent of Police, sanctioned the prosecution of an excise licensee under section 41 (c) of the Excise Act, but did not pass orders authorizing any particular Excise Officer to make a report or complaint. A report was then made to a Magistrate by a Sub-Inspector of Police. Held that this was not a complaint within the provisions of section 63 (1) (a) of the Burma Excise Act. *Kaung Ki v. King-Emperor*, 1917-1920, Upper Burma Rulings, page 197.

## B. EVIDENCE ACT.

26. Section 60—*Written information*.—Evidence must be oral and a written information is not evidence. *Mi Hauk v. King-Emperor*, Criminal Appeal No. 276 of 1907, Lower Burma Rulings, Volume IV, page 121.

27. Section 133—*Purchase of liquor by an informer*.—A policeman or other person procuring an illegal sale of liquor to obtain a conviction is not an accomplice whose evidence, if uncorroborated, ought not to be accepted as sufficient for conviction. *Queen-Empress v. Bastin*, Criminal Reference No. 1 of 1897, Lower Burma Printed Judgments, page 365.

28. The evidence must be subjected to the most rigid tests in the endeavour to ascertain the true facts. If after doing this the court is satisfied that the accomplice has spoken the truth, the accused should be convicted of the crime. *Po Chit and one v. King-Emperor*, Criminal Appeals Nos. 604 and 605 of 1910, Lower Burma Rulings, Volume VI, page 4.

29. While the conviction based merely on the evidence of accomplices is not necessarily unsound the court will ordinarily require that that evidence should be corroborated in some material particular. *Ah Tat v. King-Emperor*, Criminal Revision No. 465 of 1911, Upper Burma Rulings, 1910-13, Volume I, page 96.

## APPENDIX IV.

## READY RECKONER.

## 1. Measures of Weights.

## (1) Avoirdupois—

437½ grains	=	1 ounce (oz.).
16 ounces	=	1 pound (lb.)=7,000 grains.
28 pounds	=	1 quarter (qr.).
4 quarters = 112 pounds	=	1 hundredweight (cwt.).
20 cwt.	=	1 ton.

## (2) Apothecaries—

20 grains	=	1 scruple.
3 scruples	=	1 drachm = 60 grains.
8 drachms	=	1 ounce = 480 grains.
12 ounces	=	1 pound = 5,760 grains.

## (3) Indian and Burmese—

180 grains	=	1 tola.
80 tolas	=	1 seer = 2 <sup>1</sup> / <sub>35</sub> lbs.
40 seers	=	1 maund = 82 <sup>1</sup> / <sub>2</sub> lbs.
140 tolas	=	1 viss = 36 lbs.

## 2. Measures of Capacity.

4 gills	=	1 pint = 20 fluid ounces.
2 pints	=	1 quart.
4 quarts	=	1 gallon.
54 gallons	=	1 hogshhead.
1 gallon	=	6 reputed quart bottles.
	=	48 drams.

## 3. Measures of Length.

12 inches	=	1 foot.
3 feet	=	1 yard.
1,760 yards	=	1 mile.

## 4. Measures of Area.

4,840 sq. yards	=	1 acre.
640 acres	=	1 square mile.

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PART VII.  
INDEX.

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ABBREVIATIONS USED.

- |     |                 |         |             |
|-----|-----------------|---------|-------------|
| (s) | = Section.      | (App.)  | = Appendix. |
| (n) | = Notification. | (Part)  | = Part.     |
| (r) | = Rules.        | (Chap.) | = Chapter.  |
| (d) | = Direction.    |         |             |

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