

island Ordinances relating to liquor. This practically confirms the opinions already conveyed to you, and continues in force all the provisions of the island Ordinances which are not in conflict with those of the Act. Dr. Fitchett suggests that the Ordinances be brought into line with one another, as well as with the New Zealand Act, and I shall be glad to hear from you as to whether you consider any steps should be taken in the direction of amending the Ordinances accordingly. I think, however, that it would be a pity to in any way relax the restrictions which have been placed upon the introduction and sale of liquor as affecting the different islands, although there is no doubt that some simplification of the present law is very desirable.

The Resident Commissioner, Rarotonga.

I have, &c.,
C. H. MILLS.

Enclosure.

MEMORANDUM on the Construction of Sections 19 to 28 of "The Licensing Acts Amendment Act, 1904," and the Extent to which they affect the various Island Ordinances relating to Liquor.

1. SECTIONS 19 to 28 of "The Licensing Acts Amendment Act, 1904" (which expressly apply to the Cook and other Islands, are in some respects obscure, but on the whole I am of opinion that their purpose and effect is to absolutely prohibit all private traffic in liquor in the islands, and to allow it to be sold only as provided by section 22—viz., by specially appointed Customs officers and solely for use in arts or manufactures, or for medical, religious, or scientific purposes. The sale of liquor for ordinary consumption as a beverage is thus made unlawful.

2. Liquor cannot be imported or manufactured for sale or consumption except through the officers mentioned in section 21. "Sale" here means sale by the Customs officers under section 22, for any other sale is unlawful.

3. Liquor may be imported by private persons for consumption (but not for sale) if, as provided by section 21, it is imported through and consigned to the Government officers mentioned therein; and the importation and consumption may be restricted by regulations under section 28.

4. As regards the Native inhabitants (including in that term all Polynesians resident in the islands) section 23 provides that no liquor shall be sold to them except on the written authority of one of the specified officers. In my opinion this section must be read with section 22, as referring to sales thereunder, for it is only sales under section 22 that are lawful. The effect, therefore, is that liquor cannot be sold to Natives for any of the purposes mentioned in section 22 except on the written authority of the officer mentioned in section 23.

5. Speaking generally, the New Zealand Act repeals or modifies the island Ordinances in so far, but so far only, as they are inconsistent with or repugnant to it. The penalties under the former are in every case different from those under the latter. Hence in cases where the Act creates the same offence as an Ordinance, the Act should be treated as impliedly repealing the Ordinance, and proceedings should be taken under the Act. But the Ordinance will stand as to offences which are created by it alone, and are not repugnant to or inconsistent with the New Zealand Act.

6. It may be convenient to refer to the various Ordinances in detail:—

Rarotonga Ordinance of 1899.

Section 25 (sales and gifts) is superseded by the New Zealand Act as to sales, but stands as to gifts of liquor, and in the case of gifts must be read subject to section 6 of the Ordinance of 1904, which authorises gifts of spirituous liquor to Natives (including Chinamen) on the written authority of the Resident Medical Officer.

Rarotonga Ordinance of 1904.

This Ordinance may be treated as superseded by the New Zealand Act, except that section 6 (sales and gifts) stands as to gifts of spirituous liquor to Natives as defined (including Chinamen), but is superseded by the New Zealand Act as to sales.

Mangaia Ordinance of 1899.

Section 22: The first portion (importation) stands, but the importation is by private persons under section 21 of the New Zealand Act. The two provisions can be read together and are cumulative. Hence in the case of Mangaia the liquor imported under section 21 of the Act must be for medicinal purposes only and on the "order" (which I think means "authority or consent") of the Resident Surgeon of the Cook Islands Hospital. The second portion (sales and gifts) stands as to gifts of liquor, but is superseded as to sales by the Act, which forbids sales except under section 22.

Section 24 (manufacture of orange-beer or other intoxicating liquor) is superseded by section 24 of the New Zealand Act.

Aitutaki Ordinance of 1899.

Section 23 (sales and gifts) is superseded as to sales, but stands as to gifts.

Section 25 (manufacturing or drinking bush-beer) is superseded by section 24 of the New Zealand Act.