

1909.
January 20.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

HENDRICK v. KIRIHAMI.

P. C., Kandy, 16,974.

Public servant, obstruction to—Search for toddy—Refusal to allow search—Spilling the contents of pot of toddy—Obstruction.

Where a constable went with a search warrant to search the accused's house for fermented toddy, and the accused refused to allow such search and also spilt a pot of toddy on the ground,—

Held, that the conduct of the accused did not amount to obstruction.

P. C., Ratnapura, 3,948,¹ disapproved.

A PPEAL by the accused from a conviction. The facts appear in the judgment.

Van Langenberg, for the accused, appellant.

January 20, 1909. HUTCHINSON C.J.—

The appellant is convicted of obstructing a public servant in the discharge of his duties in executing a search warrant to search the accused's house for fermented toddy. What the evidence shows is that the constable went to the accused's house with a search warrant to search for fermented toddy, and he says: "Accused was inside the house, and I spoke to him and told him the object of our coming. He said he would not allow me to search without the village headman being present, and so saying he got inside the house and picked up a pot of toddy and spilt it over the hearth." The constable did search the house, and I can see no evidence that the accused obstructed him in his doing so. The mere saying that he would not allow him to search without doing anything more is not an obstruction; and the spilling of the toddy was certainly not an obstruction.

My attention has been drawn to a case No. 355, P. C., Ratnapura, 3,948, in which on July 20, 1906, Mr. Justice Wood Renton held that a similar act was an obstruction. In that case an Arachchi went to the accused's house with a view to procure evidence to show whether a charge that the accused was selling toddy illicitly was true or false. It does not appear that he had a search warrant. When he arrived in front of the accused's house he saw a pot, which he believed might contain toddy, standing on a *messa*. Before he had begun to make any search, or had done anything else, at least so I gather from the judgment, the accused kicked at the pot with the obvious intention of destroying the evidence which it might have supplied against him. Mr. Justice Wood Renton held that was an obstruction of the Arachchi within the meaning of section 183. As at present advised I decline to follow that decision.

I allow the appeal and set aside the conviction.

Appeal allowed.

¹ S. C. Min., July 20, 1906.