1947 *Present :* **Windham J.**

GOONESEKERE *et al.*, Appellants, *and* INSPECTOR OF POLICE, KIRIELLA, Respondent.

S. C. 1,382–5—M. C. Ratnapura, 6,690.

Evidence—Corroboration of witness—Led before evidence which it is intended to corroborate—Does it vitiate trial ?—Prejudice—Evidence Ordinance, section 157.

Where evidence which is called in corroboration under section 157 of the Evidence Ordinance is called before the evidence which it is intended to corroborate a trial is not vitiated, unless prejudice is caused to the accused.

King v. Majeed (1914) 17 N. L. R. 254 and *King v. Silva (1928) 30 N. L. R. 193*, referred to.

APPEAL from a judgment of the Magistrate of Ratnapura.

M. M. Kumarakulasingham, for the appellants.

V. T. Thamotheram, C.C., for the Attorney-General.

December 10, 1947. WINDHAM J.—

This is an appeal against the conviction of the four accused on the charges of house trespass and theft. The appeal must be dismissed. The only point of appeal that calls for consideration is the following :— The first witness called for the prosecution was not an eyewitness to the commission of the offence, but he stated in evidence that his daughter immediately after the incident complained to him as to what had happened, stating that she had seen the accused committing the offence. He related in some detail what she had told him. The second witness to be called was the daughter herself, and she gave evidence that she had seen the accused committing the offence. Her evidence as to what she had seen tallied in all respects with the evidence of her father as to what she had told him she had seen. It is contended for the defence that the evidence of the daughter should have been called before the evidence of the father, the contention being that evidence which is called in corroboration under section 157 of the Evidence Ordinance should be called after and not before the evidence which it corroborates or is intended to corroborate. The cases, *King v. Majeed* [1], and *King v. Silva* [2], are relied on. It is true that in both those cases the practice of calling evidence under section 157 of the Eivdence Ordinance, before evidence which it is proposed to corrobarate, was condemned. But in neither of these was it decided that the calling of such evidence in advance vitiates the trial. In both those cases the direct evidence which was later called failed to support the " corroborating " evidence. In such a case clearly an accused is prejudiced, and it is the danger of evidence which has been anticipated failing to materialize which makes the practice of anticipating such evidence by hearsay a vicious one. But where as in this case the direct evidence is forthcoming and differs in no material respect from the evidence which was adduced to " corroborate " it in advance, no prejudice can be caused to an accused person. Certainly no prejudice was caused to these accused. The appeal is accordingly dismissed.

Appeal dismissed.

[1] *(1914) 17 N. L. R. 254.*

[2] *(1928) 30 N. L. R. 193.*