

May 11, 1911

Present : Lascelles C.J. and Middleton J.

MUTTAR v. KATHIRASAPILLAI.

40—D. C. Jaffna, 6,167.

Appeal—Application to call witnesses made to Appeal Court.

LASCELLES C.J.—Apart from the general rule that parties should not be allowed to bolster up their cases by adducing fresh evidence on appeal, it is obviously dangerous to allow an important witness to be called after the pinch of the case has been ascertained and the precise points located at which the effect of the fresh evidence might be expected to be decisive.

IN this case the plaintiff alleged that he was sub-renter under the defendant of the toddy farm of Chundikuli, Jaffna, and that the defendant by a notice published in the district wrongfully prevented the plaintiff from receiving the profits of the farm, and claimed damages.

The defendant denied that plaintiff was the sub-renter, and alleged that one Sinnaddy Tambo was the sub-renter. Neither plaintiff nor defendant called Tambo as a witness in the District Court. The learned District Judge held that S. Tambo was the sub-renter, and dismissed plaintiff's action.

The plaintiff appealed.

Bawa (with him *J. Joseph*), for the appellant, after arguing on the facts, moved that the case be sent back that S. Tambo's evidence may be recorded.

Balasingham, for the respondents.

Cur. adv. vult.

May 11, 1911. LASCELLES C.J.—

His Lordship discussed the facts, and then continued :—

The evidence, I think, would not justify a conclusion that the plaintiff was in fact a sub-renter under the defendant. It was suggested that Sinnaddy Tambo should be examined as a witness. This witness would unquestionably be in a position to throw light on much that is obscure in the case, but I am nevertheless unable to accede to this suggestion. Apart from the general rule that parties should not be allowed to bolster up their cases by adducing fresh evidence on appeal (*Evans v. Benyon*¹), it is obviously dangerous to allow an important witness to be called after the pinch of the case has been ascertained and the precise points located at which the effect of fresh evidence might be expected to be decisive.

I think that the judgment should be affirmed and the appeal dismissed with costs.

MIDDLETON J.—I entirely agree.

Appeal dismissed.

¹ 37 C. D. 345.