

*Present:* Lascelles C.J.

APPUHAMY ARACHCHI v. LANE SINNO.

142—P. C. Badulla-Haldummulla, 4,763.

*Evidence—Sending person to purchase arrack from person suspected of illicitly dealing in arrack—Evidence of emissary admissible.*

Where an arachchi sent a headman to go and purchase arrack from a person who had been suspected of illicitly dealing in arrack—

*Held*, that the evidence of the headman was admissible;—but such evidence ought to be received with caution.

LASCELLES C.J.—It is true that the practice of employing an emissary to procure evidence of an offence has often been severely condemned, and there certainly are cases in which such condemnation is merited. But there is a class of offence—and this belongs to that class—in which evidence of the commission of the offence can hardly be procured without employing some such means as were used by the arachchi in this case . . . . . I agree that such evidence ought to be received with caution, and that it should be closely scrutinized. But to hold that such evidence ought not to be admitted in Courts of law would be to deprive the authorities of their principal weapon in securing the observation of enactments like the Licensing Ordinance.

**T**HIS was an appeal against an acquittal by the Attorney-General.

*Walter Pereira, K.C., S.-G., for the Crown.*

No appearance for the respondent.

1912. April 3, 1912. LASCELLES C.J.—

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In this case the Magistrate has dismissed the case on the ground that he does not believe the evidence, and he has also strongly condemned the conduct of the arachchi in sending a headman to go and purchase arrack from the accused, who had been suspected of illicitly dealing in arrack. Now, if the Magistrate had assigned any reason for disbelieving the witnesses, I should have been reluctant to have interfered with his finding. But no reason is assigned in his judgment, and it seems to me that it is a serious matter to hold that the evidence of all these witnesses is a fabrication. I am by no means satisfied that this is a false case. I cannot see in the evidence any considerable contradiction or improbability that would warrant a finding that the evidence is fabricated.

With regard to the observation of the Magistrate with reference to the conduct of the arachchi, I am of opinion that he has gone too far. It is true that the practice of employing an emissary to procure evidence of an offence has often been severely condemned, and there certainly are cases in which such condemnation is merited. But there is a class of offence—and this belongs to that class—in which evidence of the commission of the offence can hardly be procured without employing some such means as were used by the arachchi in this case. It is by no means an uncommon practice here and in England and elsewhere for the police authorities to prove illicit sales, or sales in prohibited hours, or sales to prohibited persons, by the means adopted in this case. I agree that such evidence ought to be received with caution, and that it should be closely scrutinized. But to hold that such evidence ought not to be admitted in courts of law would be to deprive the authorities of their principal weapon in securing the observation of enactments like the Licensing Ordinance. I am not prepared to endorse the condemnation which the Magistrate has passed on the arachchi in this case. I think the acquittal ought to be set aside, and the case should be re-tried before another Magistrate.

*Sent back.*

