1950 *Present:* **Nagalingam J.**

DHARMADASA, Appellant, *and* THIEDEMAN (Inspector of Police), Respondent

S. C. 391—M. C. Gampola, 19,474

Soliciting—Meaning of expression—Vagrants Ordinance (Cap. 26), s. 7 (1) (a).

The term " soliciting " in section 7 (1) (*a*) of the Vagrants Ordinance need not necessarily be confined to cases where an appeal is made earnestly or is pressed. It is wide enough to cover the case where a person is invited or even where an offer is made coupled with not necessarily an express but an implied invitation.

APPEAL from a judgment of the Magistrate's Court, Gampola.

M. M. Kumarakulasingham, with *J. C. Thurairatnam*, for accused appellant.

S. S. Wijesinha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 11, 1950. NAGALINGAM J.—

The appellant in this case has been convicted by the learned Magistrate at Gampola of having committed an offence under section 7 (1) (*a*) of the Vagrants Ordinance (Cap. 26 of the Legislative Enactments) and sentenced to undergo a term of three months' rigorous imprisonment. The only point that was pressed on appeal was whether the facts testified to by the prosecution witnesses disclosed the offence and in particular whether the facts established could be said to amount to soliciting within the meaning of the section under which the accused was charged.

The evidence, which the learned Magistrate has accepted, proves that as the two witnesses who gave evidence in the case, viz., Mutuwa and Wickremesinghe, passed along the road the accused spoke to them and, according to the witness Mutuwa, intimated to him that he had two girls, and according to Wickremesinghe he asked them to have tea and anything else they wanted, and on the last-named asking the accused where his house was, he pointed out to the house where near the doorway were two women who, according to the witness, laughed when he turned in that direction.

The events that subsequently transpired were narrated by the witnesses but they could at best be regarded as furnishing corroborative testimony, for the subsequent events merely indicate that the witnesses went to the Police Station and made a complaint there, that they returned thereafter and were met by the accused—it is not clear whether it was on the road or in the accused's house ; the witnesses then proceeded to make payment to a woman and then went each with one of two other women into a room. The subsequent events disclose that at the time the witnesses went to the house of the accused, there was no question of any solicitation by the accused. The solicitation, if any, must be regarded as having taken place at the first meeting of the witnesses with the accused.

The question is whether the offer by the accused to the witness Mutuwa of two women and to the witness Wickremesinghe of tea and anything else they wanted while at the same time the accused pointed out his house where two women were out obviously to attract the attention of any males, constitutes soliciting.

Learned Counsel for the appellant relied upon the case of *Thiedeman v. Gunasekera* [1] and stressed one sentence from the judgment where de Kretser J. expounded the meaning of the term " soliciting ". " Soliciting ", the learned Judge said, " connotes importunity, asking with earnestness, pressing of a matter, and not mere inquiry ". But the learned Judge did not stop there, for he proceeded to observe that " it may mean *inviting* as when a trader solicits patronage—but that again is not mere inquiry ". The term " solicit " or " soliciting " need not necessarily be confined to cases where an appeal is made earnestly or is pressed but it is wide enough to cover the case where an invitation is extended or where a person is invited or even where an offer is made coupled with not necessarily an express but an implied invitation.

[1] *(1941) 43 N. L. R. 143 ; 21 C. L. W. 110.*

It is to be noted that in the case cited by Counsel the facts clearly show that there was no soliciting by the accused. Both in that case and in the case referred to therein, reference to which is not to be found in the report but which according to Counsel is the case of *Selvaratnam v. Martin* [1], the facts were that Police officers went up and halted their cars near about houses reputed to be of ill-fame and by either switching off lights and in the latter case by tooting horn in addition, attracted the attention of the accused persons who thereupon went up to the Police officers and made inquiries whether they wanted " the goods " or used some other euphemistic term. It was held in these circumstances, and there can be little doubt in regard to it, that there was no solicitation by the accused in those cases, but if at all, the solicitation proceeded from the Police officers themselves who played the rôle of would-be patrons.

The facts of the present case amply fall within the definition of soliciting in the sense of an invitation, for the offence was complete when the the accused made offer of women to the witness Mutuwa and invited the witness Wickremesinghe to come in and have tea and anything else he wanted, implying women. The case, therefore, against the accused has been established and I see no reason to interfere with the judgment of the lower Court.

I therefore dismiss the appeal.

Appeal dismissed.