REID *v.* KIRIWANTI.

1903.
February 19.

P. C., Badulla-Haldummulla, 11,420.

Dishonestly receiving and retaining stolen property—Penal Code, s. 394—Identity of tea stolen—Evidence of experts—Adjournment of hearing to enable complainant to make further inquiry—Criminal Procedure Code, s. 289—" Reasonable cause " for adjournment.

On a charge of dishonestly receiving and retaining orange pekoe tea, stolen from the complainant, the superintendent and the teamaker of the estate where the tea was made, being experts, may be called to prove that the tea found with the accused was of their manufacture. Their opinion as to the identity of the tea should carry weight.

MIDDLETON, J.—Under section 289 of the Criminal Procedure Code it would not be " reasonable cause " to adjourn a case whenever the prosecution desires to make further inquiry, but I think myself that there are cases in which the Magistrate might deem it expedient to grant a postponement for further inquiry, which might be deemed reasonable cause for such adjournment. The police, for instance, in making an inquiry may want to get further evidence, and I think, if the police apply for an adjournment to make further inquiry, that that would be an adjournment for a reasonable cause.

Gomis v. Agoris, 2 N. L. R. 180, not followed.

THE judgment of Middleton, J., explains the facts of the case.

De Alwis, for accused, appellant.

Dornhorst, K.C., for respondent.

19th February, 1903. MIDDLETON, J.—

In this case the accused has been found guilty of receiving and retaining stolen property knowing the same to have been stolen, to wit, orange pekoe tea, and sentenced to six months' imprisonment.

On the appeal lodged against that conviction it was argued, first, that the charge is defective, inasmuch as the quantity of tea alleged to have been received is not stated. That is certainly the case, but I think that that is a defect which, if I amend it, will not prejudice the accused.

Then there is said to be a serious irregularity, on the ground that the hearing was postponed for further inquiry to be made. That adjournment was granted by the Magistrate under section 289 of the Criminal Procedure Code. He certainly had the power to postpone or adjourn the hearing on the ground of the absence of witnesses or for any other reasonable cause. Now, it has been decided, in a case by Mr. Justice Withers reported in *2 N. L. R. 180*, that it was not " reasonable cause " to adjourn a case where the

1903. *February 19.* MIDDLETON, J.

prosecution desired to make further inquiry. In every case i certainly would not be reasonable cause, but I think myself that there are cases in which the Magistrate might deem it expedient to grant a postponement for further inquiry, which might be deemed reasonable cause for such adjournment. The police, for instance, in making an inquiry may want to get further evidence, and I think, if the police apply for an adjournment to make further inquiry, that that would be an adjournment for a reasonable cause. So I do not think that that is a ground for quashing the conviction in this case.

On the merits, the Magistrate has found that this tea which was found in a bottle in an uninfused state was the property of the superintendent of the Haputale estate. He was called, and so was his teamaker, both of whom are experts in tea, and both were of opinion that the tea was of their manufacture, a conclusion, to my mind, not unreasonable. Both were experts and accustomed to deal with tea, and their opinion should carry weight. In the same way a farmer dealing with wheat is certainly competent to identify his own wheat. I do not think therefore that the Magistrate was wrong in holding that the teamaker and the superintendent had established that the tea in question was the tea manufactured by them. If then the tea belonged to them, w there evidence to show that this man received it knowing it t have been stolen. The Magistrate believed the witness Suppaiya He heard his evidence and he believed him. If Suppaiya, then, i to be believed, it seems to me that there is evidence upon whic the Magistrate could say that this tea formed part of some tea which had been received by the accused with knowledge that it was stolen. The accused says that the tea taken from the factory was not the tea found in his possession. On the other hand, there is strong evidence to show that it was the same tea.

I think, putting aside all the evidence that has been called subsequent to the adjournment given by the Magistrate, there is sufficient evidence for the Magistrate to have arrived at the conclusion that he has arrived at.

As regards the value of the tea, I direct that the conviction be amended by inserting the value of the tea found in the possession of the accused, and that the conviction do stand subject to such amendment.