

1927.

Present : Lyall Grant J.

SUB-INSPECTOR OF POLICE, ALUTGAMA v. FERNANDO.

98—P. C. Kalutara, 19,094.

Search-warrant—Powers of police officer—Stolen property—Criminal Procedure Code, s. 70.

Under the provisions of section 59 of the Police Ordinance a police officer may enter without a warrant premises which he reasonably suspects to contain stolen property.

Such right is not affected by section 70 of the Criminal Procedure Code nor confined to cases of just suspicion as do not reasonably admit of delay in the search.

*Miskin v. Dingiri Banda*¹ followed.

A PPEAL from a conviction by the Police Magistrate of Kalutara.
The facts appear from the judgment.

M. T. de S. Amerasekere, for appellant.

Obeyesekere, D.S.-G. (with *Fonseka, C.C.*), for the Crown.

July 1, 1927. LYALL GRANT J.—

This case was argued before me on March 7, 1927, when Mr. Amerasekere appeared for appellant and there was no appearance for the respondent.

The question which arose for decision was whether a conviction on a charge of using criminal force to a police constable with intent to prevent the discharge by him of his public duties could be sustained.

The force complained was employed when the police constable was endeavouring to enter the house of the accused to search for stolen property.

¹ 4 C. L. Rec. 166.

I then decided that as the police constable had not obtained a warrant under section 70 of the Criminal Procedure Code to search the house he was not acting within the scope of his duty and that the conviction was bad. It has since been brought to my notice that by a decision of three Judges in the case of *Miskin v. Dingiri Banda (supra)* the Supreme Court has decided that under the provision of section 59 of the Police Ordinance, No. 16 of 1865, a police officer may enter without a warrant any premises in which, *inter alia*, he has just cause to believe that crime has been committed or is about to be committed or which contain stolen property, and that such rights are not affected by section 70 of the Criminal Procedure Code nor confined to cases of just suspicion which do not reasonably admit of delay in the search. That decision overruled two previous decisions of this Court delivered in 1879, namely, *Michael v. Janis Appu*¹ and *Inspector Gooneratne v. Don Poulis Abeyratne*.²

Further argument was addressed to me by counsel for the appellant with a view to showing that the provisions of section 59 did not apply to the search of any and all premises which the police officer suspects to contain stolen property.

If I may express my own opinion, it appears to me that there is great force in the argument advanced on behalf of the appellant. The point is, however, completely covered by the decision in *Miskin v. Dingiri Banda (supra)*, an authority by which I am bound.

In these circumstances I have no alternative but to rescind the order as made *per incuriam* and to dismiss the appeal.

Appeal dismissed.

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LYALL
GRANT J.

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