1957 *Present :* **T. S. Fernando, J.**

M. M. BANDAPPUHAMY, Appellant, *and* G. M. B. EKANAYAKE, (Inspector of Police), Respondent

S. C. 232—M. C. Chilaw 16,487

Evidence—Palm print or finger print—Mode of proving it—Expert—Is proof of his competency necessary ?—Evidence Ordinance, s. 45.

In a case where the prosecution relies on the evidence of the palm print of the accused as incriminating the accused, evidence must be expressly adduced to show that the finger print slip alleged to have been taken in Court for examination by an expert did in fact contain the palm prints of the accused.

Quaere, whether failure to prove the competency of a witness called as an expert renders his evidence irrelevant.

[1] *(1936) 1 Ceylon Law Journal 29.*

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

E. A. G. de Silva, for the accused-appellant.

Ananda G. de Silva, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

June 20, 1957. T. S. FERNANDO, J.—

The negligence of the prosecution in the Magistrate's Court is responsible for the decision I have reached in this case that the conviction of the appellant must be set aside.

The appellant had been charged with the commission on 1st June 1956 of the offences of housebreaking and of theft of articles, some of which had been in a wardrobe in the burgled house. The wardrobe itself had been forced open and the contents of one of its drawers rifled by the thief or thieves. The only evidence which, according to the Magistrate, incriminated the appellant was the finding of a palm print on the exposed side of one of the doors of the wardrobe. The Magistrate was satisfied that this palm print had been identified as the left palm print of the appellant by comparison of it with the palm prints of the appellant alleged to have been taken in court. I shall consider presently the nature of the evidence led to establish the identification. The appellant in giving evidence on his own behalf attempted to give an explanation of the circumstances in which his palm print could have been left behind on the wardrobe door, but this explanation has been rejected by the learned Magistrate. If it has been proved that it was the appellant's palm print that was left on the wardrobe door, it follows that the appellant has failed to account for the innocent presence there of his palm print.

Learned counsel for the appellant has contended that no proof was adduced in the Magistrate's Court that the finger print slip (marked P6 in this case) with which the finger print on the wardrobe was compared by the witness Velin did in fact contain the finger prints and palm prints of the appellant. Sergeant Daniel of the Chilaw Police who gave evidence before the Magistrate stated that on the orders of the Court he obtained the finger and palm prints of the appellant in open court and that the prints so taken were sent through the Court to the Registrar of Finger Prints. He did not purport to identify the finger print slip so taken or to refer to it by any identifying number. He did not even say on which date he took the appellant's finger prints. In this state of facts there was no proof before the Magistrate's Court that the document which Velin used for purposes of comparison with photographs of the prints left on the wardrobe was the document referred to by Sergeant Daniels as that containing prints of the appellant. The case was therefore left without proof as to the identity of the person whose finger and palm prints were to be found on the document which was used by Velin for purposes of comparison. The objection taken by counsel is, no doubt,

technical, but going as it does to the root of the whole case against the appellant cannot be brushed aside. Counsel's contention that the guilt of his client has therefore not been established is in my opinion entitled to prevail.

Although the point referred to above is sufficient to dispose of the case, it is noteworthy that the lapses of the prosecution did not end in this case with its failure to prove the finger print slip alleged to have been taken in court. Learned counsel has raised a further point that there is no evidence that the witness Velin who has expressed an opinion upon a comparison of finger and palm prints is an expert. He contends that Velin's evidence would have become relevant only if evidence had been adduced to show that he was an expert as contemplated in section 45 of the Evidence Ordinance. Velin described himself as an Assistant to the Registrar of Finger Prints. He did not say he had any expert knowledge of the science of finger print comparison nor was a single question put to him in an attempt to show that he was otherwise competent to express an opinion on identification by a comparison of finger prints. A question asked of this witness when under cross-examination appears to suggest that the person putting the question assumed the witness to be an expert on the particular science, and learned Crown Counsel points out to me that in the report (P8) of this witness produced in court the legend " Finger Print Expert " has been appended beneath his name. In the view I have taken of the first point raised by counsel for the appellant it becomes unnecessary for me to express any opinion on the merits of this further point ; but I should add that by a failure to prove the competency of a person a party calls into the witness box as an expert a serious and very real risk is being run of the evidence of such a person being ruled out as irrelevant.

As indicated above, the conviction and sentence must be set aside and the appellant acquitted.

Appeal allowed.