

1918.

Present: Bertram C.J.

RAPU *v.* ABRAHAM.

829—*M. C. Colombo, 3,392.*

*Ordinance No. 7 of 1889—Accosting soldiers passing through Colombo—
Lawful excuse—Vagrants—Idle and disorderly persons.*

A person who persistently followed, accosted, and addressed by words and signs certain wounded soldiers passing through Colombo against their will and to their annoyance, with the object of getting them to go to a certain shop, hoping to get a commission from the shopkeeper, was held not to have had a "lawful excuse" for so acting within the meaning of Ordinance No. 7 of 1889.

THE facts appear from the judgment.

L. H. de Alwis, for the appellant.

No appearance for the respondent.

October 22, 1918. BERTRAM, C.J.—

This is an appeal against a conviction under Ordinance No. 7 of 1889. This Ordinance was passed to deal with a public nuisance, which may well become of a serious character, namely, the touting which goes on in the streets of Colombo by various persons for various purposes and the annoyance thereby occasioned to passengers and others visiting the port. Touting may be carried on in a large

¹ (1834) 10 Bing. 376.

² (1834) 10 Bing. 482.

port like Colombo for many purposes much less innocent than the sale of Indian silks or the recommendation of hotels. If it were possible for any person, when he was found touting, to produce a hotel card or a card from a merchant, and this was admitted as a lawful excuse for his proceedings, the object of the Legislature in passing the Ordinance would, I think, be frustrated.

One must examine the provisions of the Ordinance with a view to the abuses that it was intended to remedy. This was a very clear case. It is undoubtedly the fact that the accused did "persistently follow, accost, or address by words or signs" certain persons, namely, certain wounded soldiers, "against their will and to their annoyance." But it is argued on behalf of the appellant that it is shown that the accused person was acting with a "lawful excuse." The suggested "lawful excuse" is that he hoped, if he got the persons whom he was importuning into a certain shop, that he would get a commission out of the shopkeeper in respect of any purchases that were made. I do not know what would constitute a "lawful excuse" for "persistent following, accosting, or addressing a person by words or signs against his will and to his annoyance" within the meaning of this point. It is quite clear that the mere expectation of securing a commission in respect of purchases made by the persons worried was not a lawful excuse for such action.

Mr. de Alwis suggests that, in view of the preamble to the title of the Ordinance, one ought to require some evidence that the person accused was a person in the nature of a vagrant. I do not myself take this view of the Ordinance. The Ordinance was passed with a view to applying the provisions of what is known as the Vagrants Ordinance to a particular abuse. It amended the law by bringing within its provisions a class of persons who would not otherwise be within its provisions, and it declared that that class of persons should be deemed to be ranked under one of the categories of vagrants with which the Ordinance deals. The Vagrants Ordinance deals with three classes of persons. The first class of person is the "idle and disorderly person" (section 3); the second is the "rogue and vagabond" (section 4); the third is the "incorrigible rogue" (section 5). This gradation of vagrants has been introduced into this Colony from the English law. From time to time, in order to preserve order and decency, legislation is passed to bring various persons within one or other of these classes. Thus, in England, the "bully," i.e., the person who lives on the earnings of prostitutes, has been classified as an "incorrigible rogue." Similarly, for the same reason, the tout, with whom we are familiar in the Fort, has by Ordinance No. 7 of 1889 been classified as an "idle and disorderly person," so as to bring into operation the machinery of the Vagrants Ordinance. For the reasons I have explained, I am unable to allow the appeal.

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Appeal dismissed.