1965 *Present :* **Sansoni, C.J.**

L. EDWIN SINGHO, Appellant, *and* SAMSUDEEN (Police Sergeant), Respondent

S. C. 566/65—M. M. C. Colombo, 22922

Charge of illegal possession of excisable article—Proof of nature of excisable article—Report of Government Analyst not always necessary—Excise Ordinance, s. 47.

In a prosecution under section 47 of the Excise Ordinance for illegal possession of an excisable article (24 drams of fermented toddy)—

Held, that the Government Analyst should not be asked to examine and report on the nature of every production in an excise prosecution. Officers of the Excise or Police Department who have the experience and knowledge to prove the nature of a production can give evidence on such a matter.

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

Ananda Wijesekera, for the accused appellant.

K. Ratnesar, Crown Counsel, for the Attorney-General.

September 6, 1965. SANSONI, C.J.—

The appellant was accused, in a plaint filed on 17th December, 1963, of having had in his possession an excisable article, to wit : 24 drams of fermented toddy, and thereby committed an offence punishable under section 47 of the Excise Ordinance.

On the facts the learned Magistrate held that the two Police Officers who detected the offence, namely, Sub-Inspector Perera and Police Sergeant Rahim, were speaking the truth when they said that the accused was carrying 3 bottles of fermented toddy which contained 24 drams in all. With regard to the contents of the 3 bottles, the Sub-Inspector said that they were whitish in colour, they had a sour taste and smell, there was sediment at the bottom and there was froth at the mouth. The Sergeant said much the same thing. The Sub-Inspector had been 3½ years in the Police Force and had detected about ten cases of possession of fermented toddy ; the Sergeant had detected more than twenty-five cases of fermented toddy.

I have no doubt that these two officers were competent to give evidence as to the nature of the contents of the 3 bottles. They had sufficient experience in this regard, and it was not necessary to call an independent expert.

But I find from an examination of the record that on the 24th March, 1964, which was the date on which the accused appeared in answer to the summons, the Magistrate had made an order " Forward P1 to G. A." I interpret this to mean that something which bore a mark P1 came before the Magistrate in some way, and that " G. A. " stands for Government Analyst. This is not correct procedure. A witness should have given evidence and produced the particular article, and the Magistrate should then, if he considered it necessary, have made an order. The case was called on a number of occasions thereafter, and it was only on the 16th February, 1965, that the report was filed. The trial eventually took place on the 27th May, 1965, but the report was not produced at the trial.

In the result, the time of the Government Analyst had been wasted, and the trial took place only one and a half years after the institution of these proceedings. I hope that delays of this sort do not occur often in a Magistrate's Court. Public officers who file prosecutions must exercise their discretion carefully before they apply to the Court to send productions for examination by the Government Analyst, for the failure to do so causes unnecessary delay in the hearing of the case, and gives the Government Analyst, who is already overburdened with work, unnecessary work to do.

It is not the law that the Government Analyst should be asked to examine and report on the nature of every production in an excise prosecution. It has been held in numerous cases that officers of the Excise or Police Department who have the experience and knowledge to prove the nature of a production can give evidence on such a matter. If a contrary belief exists, it is time it was dispelled.

The appeal is dismissed.

Appeal dismissed.