1937 *Present :* **Abrahams C.J.**

DE NEISE *v.* SAMBUNATHAN *et al.*

185—8—P. C. Batticaloa, 45,122.

Opium—Unlawful possession of raw or prepared opium—Use of the word opium in Analyst's report—Presumption of guilt—Poisons, Opium, and Dangerous Drugs Ordinance, No. 17 of 1929, ss. 30 and 46 (2).

The expression "opium" includes raw or prepared opium as defined by the Poisons, Opium, and Dangerous Drugs Ordinance, No. 17 of 1929.

The mere fact that a person ran away from a house which is raided for contraband articles does not raise a presumption of guilt strong enough to demand an explanation.

APPEAL from a conviction by the Police Magistrate of Batticaloa.

L. A. Rajapakse (with him *J. R. Jayewardena*), for accused, appellants.

M. F. S. Pulle, C.C., for complainant, respondent.

October 5, 1937. ABRAHAMS C.J.—

The appellants were convicted in the Batticaloa Police Court of having in their possession without the licence of the Governor raw or prepared opium weighing two pounds, an offence punishable under section 74 (5) (*a*) of the Poisons, Opium, and Dangerous Drugs Ordinance, No. 17 of 1929, as amended by section 28 of the Poisons, Opium, and Dangerous Drugs Ordinance, No. 43 of 1935.

The appellants were all found in a house that was raided in the expectation that was realized that opium would be found on the premises. The individual and combined activities of the appellants led the raiding officers to the conclusion that they were all concerned in the possession of two one-pound packets of opium that were found on the premises. They were all convicted and fined various sums.

The petition of appeal relates to questions of fact only, but learned Counsel for the appellant when presenting his case raised and argued a very ingenious point of law. The evidence that the substance that was found on the premises was opium was given by the Excise Inspector, who

conducted the raid, and the substance was sent for examination and report to the Government Analyst. The report of the Government Analyst contained the following information :—

> "The parcel contained a sealed packet labelled 'D'. One parcel said to contain two one-pound packets of raw or prepared opium produced in P.C. Batticaloa; case No. 45,122". This held two packets of black substance.
>
> "Opium was identified in both the packets".

The charge is that of being in possession of raw or prepared opium. Raw and prepared opium are respectively defined in section 30 of the principal Ordinance as follows :—

> "Raw opium" means the spontaneously coagulated juice obtained from the capsules of the *papaver somniferum* L., which has only been submitted to the necessary manipulations for packing and transport, whatever its content of morphine ;
>
> "Prepared opium" means raw opium which has undergone the processes necessary to adapt it for smoking or eating, and includes "opium dross".

It is argued that there is no proof that the substance analysed contained either raw or prepared opium because the Analyst's report does not say so, it merely uses the expression "opium", and, says Counsel, for anything that the case actually proved the substance might have been what he called opium *simpliciter*, that is to say, opium as extracted from its source, or to use a more convenient term in the circumstances "crude opium" and that is what the Analyst may have meant, or indeed the substance might have been medicinal opium which is defined in section 46 (2) of the Ordinance, as :—

> "'Medicinal opium' means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopæia, whether it is in the form of power or is granulated or is in any other form, and whether it is or is not mixed with neutral substances".

I am of the opinion that this argument, subtle though it is, will not stand scrutiny. The very expression "raw opium" suggests opium in its crudest form, and it must be remembered that the long title of the Ordinance is "An Ordinance to amend and consolidate the Law relating to Poisons, Opium, and Dangerous Drugs", so that the Legislature must have intended to deal with opium in every known form. This is borne out by various sections where the expression "opium" is used without any qualification, for instance, section 36 prohibits the use of premises as an opium divan, that is to say, as a place of resort for the purpose of eating or smoking opium. Finally, the definition of "opium" in the Oxford Dictionary is to all intents and purposes that of "raw opium" in the Ordinance, namely :—

> "The inspissated juice of a species of poppy (*Papaver somniferum*) obtained from the unripe capsules by incision and spontaneous evaporation".

On the other point, namely, that the substance might have been medicinal, it seems to me that the evidence of the Excise Inspector was important as to the identification of the article in view of the fact that he is constantly examining such substances and that the most cursory glance and immediate odour of the substance would identify it so far as he was concerned. Also the report of the Analyst would hardly have been silent on the point. The context clearly implies that he identified the substance as raw or prepared opium.

The appeal on the facts is not pressed except by the fifth appellant. When the authorities raided the house he bolted. He was not the owner of the house nor was he related to the owner, the first appellant. No doubt to run away from a house which is raided to search for contraband articles is some indication of guilt, but it does not of itself raise a presumption strong enough to demand an explanation. The appellant might very well have known the presence of opium in the house and may even have come to obtain some, but that does not make him guilty of the offence charged. Crown Counsel agrees that he cannot urge anything more against the appellant than that he ran away.

I allow the appeal of the fifth appellant and direct his acquittal, and I dismiss the appeals of the other four appellants.

Varied.