

1945

Present: Jayetileke J.

SARANADASA (INSPECTOR OF LABOUR),
Appellant, and CHARLES APPUHAMY, Respondent.

1,206—M. C. Kandy, 19,336.

Evidence—Accused summoned to produce a document—Failure of accused to produce it—Complainant entitled to give secondary evidence—Evidence Ordinance, ss. 65, 66.

Where summons was served on the accused to produce a document in his possession but the accused did not produce it—

Held, that the complainant was entitled to give secondary evidence of the contents of the document.

A PPEAL against an order of acquittal made by the Magistrate of Kandy.

A. C. Ameer, C.C., for the complainant, appellant.

S. W. Jayasooriya (with him A. C. Nadarajah), for the accused, respondent.

Cur. adv. vult.

December 20, 1945. JAYETILEKE J.—

The accused was charged under section 25 of the Shops Ordinance, No. 66 of 1935, with having exhibited in form J 3 of the schedule a false entry to the effect that he had given a full holiday on March 5, 1945, to one Podisingho, an employee in the Pavilion Hotel. The complainant, who is an Inspector of Labour, said that he went to the hotel on March 5, 1945, and found Podisingho working in the hotel. He went a few days later and found that a false entry had been made in form J 3 that was exhibited in the hotel, to the effect that Podisingho had been given a full holiday on March 5. He initialled the form and left it in the accused's charge. J 3 was not produced at the trial but the complainant said that he had noticed the accused to produce it. The Magistrate held that as the document had not been produced there was no legal proof of the entry complained of and acquitted the accused. The present appeal is taken with the sanction of the Attorney-General against that order. Mr. Ameer contended that the complainant was entitled to lead secondary evidence of the contents of J 3 under section 65 of the Evidence Ordinance. The question is whether that contention is sound. Section 65 provides that secondary evidence may be given of the contents of the document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved or when, after notice mentioned in section 66, such person does not produce it. Section 66 provides that secondary evidence of the contents of the documents referred to in section 65 shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power such document is, such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the court considers reasonable under the circumstances of the case.

The notice to produce referred to in sections 65 and 66 is a notice issued by process of court under the Civil or Criminal Procedure Code¹. Section 66 of the Criminal Procedure Code provides that whenever any court considers that the production of any document is necessary for the purpose of any proceeding under the code it may issue a summons to the person in whose possession or power such document is believed to be requiring him to attend and produce it. The record shows that the complainant had moved the court for a summons on the accused to produce the document and that the court had, in fact, summoned the accused to do so. The summons was served on the accused 4 days before the trial. The accused was present at the trial but he did not produce the document. In the case of *Dwyer v. Collins*² it was held that the true principle on which notice to produce a document is required is merely to give a sufficient opportunity to the opposite side to produce it, and thereby to secure, if he pleases, the best evidence of the contents. All that is necessary before secondary evidence becomes admissible is a proper notice to produce³. Such a notice was given to the accused in this case and the complainant was entitled to give secondary evidence of the contents of the document. It was the duty of the accused to have produced the document if he wished to have the best evidence of its contents. I would set aside the order of acquittal and send the case back so that the Magistrate may convict the accused and pass such sentence on him as he thinks fit.

Acquittal set aside.
