

SINCLAIR v. BURKE.

D. C., Kegalla, 19.939.

1899.
April 26.

Criminal breach of trust—Value of property misappropriated—Jurisdiction of Police Court to try summarily such cases—Section 191 of the Penal Code.

It is improper on the part of a Police Magistrate to hear and determine summarily a case of criminal breach of trust in which the value of the property misappropriated exceeded Rs. 6,000 and the manner of misappropriation revealed a systematic course of gross dishonesty.

Such a case was one that ought to have been sent to the Attorney-General for his consideration and selection of Court of commitment.

THE accused was charged with criminal breach of trust in respect of 17,510 lb. of tea valued at Rs. 6,000, which he, as teamaker on Dotel-oya tea estate, received into his custody but did not account for.

Mr. T. J. de Alwis, who was Acting District Judge and Police Magistrate of Kegalla, recorded as follows:—"I think this case "may properly be tried summarily by me under section 152, sub-section 3, of the Procedure Code. Accused is informed that he "is to be tried summarily by me under section 152. He agrees to "it. Charge drawn by me (under section 391 of the Penal Code) "is read. Accused says he has nothing to say." The witnesses having been examined, Mr. Alwis convicted the accused and sentenced him to three months' rigorous imprisonment and a fine of Rs. 1,000, under section 391. The judgment was signed, "T. J. de Alwis, Acting District Judge and Police Magistrate."

The accused appealed.

Dornhorst, for appellants.

26th April, 1899. WITHERS, J.—

In this case the applicant has been found guilty of the offence of criminal breach of trust under section 391 of the Penal Code, and of the commission of that offence as a servant. Though this

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is a serious offence rendering the offender liable to fine and imprisonment of either description for a term which may extend to seven years, the old and the new Criminal Procedure Codes designate both the District and Police Courts as competent to try this offence, whatever may be the value of the property which in breach of trust has been dishonestly misappropriated. Mr. De Alwis, who tried this case, signs his judgment as District Judge and Police Magistrate, but I take it that he has tried the case summarily as a Police Magistrate. When the accused was brought before him, he informed him that he intended to try him summarily under section 152 (3) of the Criminal Procedure Code, and he recorded his opinion that the case might properly be tried summarily by him.

Now, considering that the accused was charged with two specific offences of criminal breach of trust in his capacity as servant, one occurring in December last year and the other in January this year ; considering that the value of the property said to have been criminally misappropriated in December exceeded Rs. 4,000, and the value of the property said to have been criminally misappropriated in January, 1899, amounted to nearly Rs. 3,000 ; and considering that the accused is liable for each offence to seven years' rigorous imprisonment as a maximum punishment and to a fine as well, I am utterly unable to understand how Mr. De Alwis could come to the opinion that this was a case proper to be dealt with summarily.

The sentence of three months' rigorous imprisonment and the imposition of a fine of Rs. 1,000 seems to me to be a very inadequate sentence, if these charges are true, for they indicate a systematic course of gross dishonesty ; nor can the case be a very simple one if it took so learned a counsel as Mr. Dornhorst some three days to master.

I have no hesitation in saying that this was not a proper case to be tried summarily. It was eminently a case for the Attorney-General to consider and name the Court of commitment, if he thought charges of the kind had been made out. A trial in a District Court under a committal, and a summary trial in that Court without a committal, are two very different things, for in the former case the Attorney-General has had the proceedings before him, he has settled and approved the indictment, and the prosecution is conducted by properly instructed counsel.

For these reasons I quash the conviction and direct the Magistrate to forward the proceedings to the Attorney-General for his orders thereon.