1895.
November 1.
WITHERS, J.

QUEEN *v.* DE SILVA.

D. C., Galle (Criminal), 12,156.

Intentionally giving false evidence—Trial of offence by the Judge before whom such evidence was given—Propriety of such trial.

Where a witness has intentionally given false evidence in a case before a District Judge, it is not improper on his part to try him for such offence upon a committal duly made.

But it would have been more satisfactory if at such trial he had the assistance of assessors.

THE accused in this case was found guilty on the 10th October, 1895, by Mr. H. L. Moysey, District Judge of Galle, of intentionally giving false evidence in another criminal case (No. 12,130) heard and determined by him on the 5th June, 1895. The accused was sentenced to two years' rigorous imprisonment.

On appeal, *Dornhorst* appeared for him.

1st November, 1895. WITHERS, J.—

I do not see my way to disturb the judgment or interfere with the sentence.

The chief point made by Mr. Dornhorst was, that this case was tried and determined by the same Judge before whom the accused was alleged to have given false testimony in certain criminal proceedings taken a few months ago before him.

However honourable and just a Judge may be (and, as admitted by counsel, no Judge could be more honourable and just than the present one), it was urged that he must come with a certain bias in his mind to the determination of the question which he had intentionally decided against the accused on a former occasion. This, however, it seems to me, is a risk that must be run sometimes in the course of a judicial inquiry.

For instance, as Mr. Dornhorst mentioned, the same jury who heard them made are very often called upon to try the question whether a man is guilty of making contradictory statements, and so forth.

I need only say that I wish it had occurred to the Judge in this instance to call in the assistance of assessors. Assistance of this kind is very valuable to a Judge in case of falsehood or fraud.

But after such a careful and patient trial as this accused has had in the present instance, I do not think it necessary to send the case for re-trial before the same Judge with assessors.

SOMASUNDARAM *v.* IBRAHIM SAIBU.

D. C., Chilaw, 1,173.

1895.
September 3.
WITHERS, J.

Principal and agent—Power of attorney to minor—Civil Procedure Code, s. 24.

A minor holding a general power of attorney for his principal abroad is competent to act as his agent for the limited purposes mentioned in section 24 of the Civil Procedure Code.

UNDER section 650 of the Civil Procedure Code, plaintiff obtained against the defendant a warrant in mesne process and had him arrested. He entered into a security bond and was released. On the 9th May, 1895, he moved to take the plaint off the file and to be discharged from the security bond, on the ground (1) that he had paid and settled the promissory note sued upon; (2) that Somasundaram Chetty, who held the plaintiff's power of attorney, and through whom the action was instituted, was a minor below the age of twenty-one years; and (3) that the allegations made by Somasundaram Chetty in support of his motion for the warrant in mesne process were false and vexatious.

The District Judge allowed the defendant's motion after evidence heard.

Plaintiff appealed.

Dornhorst appeared for appellant, and *Sampayo* for defendant respondent.

3rd September, 1895. WITHERS, J.—

The plaint has been ordered to be struck off the file, and it is this order of the 9th June last which has been appealed from.

The action is to recover money on a promissory note. The plaintiff is one Palaniappa Chetty, and the suit is instituted by his attorney, Somasundaram Chetty.

It is because this attorney has not attained the age of twenty-one years that the order complained of was made.

The question here is really this,—May not a minor holding the general powers of attorney for his principal abroad, which is indicated in section 25 (*b*) of the Civil Procedure Code, act as a recognized agent for the limited powers mentioned in section 24?

The said Somasundaram Chetty holds such a power; then why should he be not allowed to appear and act as the recognized agent of his principal? He has appointed an attorney-at-law to prosecute his principal's suit.

He is a young man of twenty, and has been engaged in trade for the last three years. The English law which governs the relations of principal and agent in this Colony is not against him —that I am aware of. A naked authority which is delegated by a

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WITHERS, J.

power of attorney may be exercised by any one whether *sui juris* or not, so long as he is of sane mind. (*Co. Litt. 52 a.*)

This is a pure delegation involving no liability, and I do not see why a person of competent understanding, and being one of the persons mentioned in the said section 25, should not be allowed to act as a recognized agent. He simply represents his principal when he appears, and is his mouthpiece when he makes an application. He is in no sense a public officer who must be *sui juris*.

I do not think this order should have been made, and I would remit the record for trial in due course.

Plaintiff will have his costs.

BROWNE, A. J., agreed.