## QUEEN *v.* VAIYAPURI.

*D. C., Colombo, 1,044.*

*Merchandise Marks Ordinance, No. 13 of 1888, s. 3—Offence thereunder—Election by accused to be tried before the District Court—Information by Attorney-General—Jurisdiction of District Court to entertain the information.*

A District Court has jurisdiction to inquire into and determine into an offence punishable under the Merchandise Marks Ordinance, section 3, when the accused has elected, at the magisterial inquiry, to be tried by the District Court.

Upon such election, it is competent to the Attorney-General to exhibit an information to the District Court for the trial of the accused.

THE information exhibited in the District Court of Colombo by the Attorney-General in this case, stated that the accused had committed an offence punishable under the Merchandise Marks Ordinance (No. 13 of 1888), section 3, sub-section 2, and after alleging the particulars of the offence gave the Court to understand that "on or about the 4th of July, 1894, on complaint being made "before the Police Court of Colombo in respect of the said offence, "and the said Vaiyapuri Pillai then being present before the said "Court, and being informed by the said Court of his right to be "tried by the District Court of Colombo, elected to be tried by the "said District Court," &c.

Summons having been allowed on this information, the accused appeared and submitted that the Court had no jurisdiction to entertain and inquire into the charge contained in the information, and that the Attorney-General had no power to file such an information.

The learned (Acting) District Judge (Mr. Joseph Grenier) overruled these objections, and, after evidence heard, found the accused guilty, and sentenced him to pay a fine of Rs. 200 and the costs of the prosecution as costs in the first class.

The accused appealed.

*Bawa*, for appellant.

*Dornhorst*, for respondent.

*Cur. adv. vult.*

12th February, 1895. BROWNE, J.—

A private complainant having instituted a prosecution against the appellant before the Police Court of Colombo for offences under section 3 (1) *b* and *d* of the Merchandise Marks Ordinance, 13 of 1888, and the appellant having, on his appearance before the Police Court, elected under clause 5 of the same section to be tried before the District Court, the Magistrate proceeded to inquire into the complaint as a case not triable summarily, with the result that he discharged the appellant. In appeal this Court (*3 S. C. R. 152*) quashed the proceedings subsequent to the recorded election of the respondent, but of course did not indicate what further procedure might thereafter be available to the complainant. The Attorney-General subsequently filed an information in these proceedings in the District Court, and obtained summons against the appellant. On his appearing thereto, and being called on to plead to the indictment, it was objected on his behalf that the Court had no jurisdiction to entertain or inquire into the charge in the information, and that the Attorney-General had no power to file such information in that Court.

The learned District Judge, in his very full consideration of these questions now raised for the first time, has pointed out that the Criminal Procedure Code, in sections 263–4, has contemplated that cases shall come before a District Court only in two ways: on committal from a Police Court, or by order of transfer from some other Court; that section 8 of that Code gives District Courts jurisdiction in criminal matters "subject to the provisions of the Code"; and that section 13 provides that a District Court shall not take cognizance of any offence as a court of original criminal jurisdiction unless there has been such a committal or transfer; and that chapter 20 has empowered the Attorney-General to exhibit original information at his pleasure in the Supreme Court only, and in the Supreme and District Courts after the discharge of an accused by a Police Court under the provisions of chapter 16, when he is of opinion that such accused person should not have been discharged, and only thereafter. He further remarked that

"the provisions in Ordinance No. 13 of 1888, section 3 (5), related "to a person charged, and directed he should be put to his election "before the charge is gone into," and said he was inclined to consider that section 226 [*i. e.*, section 219 (2) of Ordinance No. 22 of 1890] should be read therewith or thereinto, and that on the accused electing as here to be tried by the District Court, the Magistrate should record the necessary preliminary evidence whereon the District Court could subsequently proceed, and commit him thereto. In view, however, of the order of this Court previously made, holding that the Police Magistrate was *functus officio* as soon as election was made by the accused, he assumed he had jurisdiction in respect of the information filed, and he tried the accused and convicted and sentenced him.

This is but a very brief *précis* of the views expressed with full comment and reasoning in some 24 pages of the record. I do not, however, recite them more fully, for the reason that I would affirm that the District Court has jurisdiction, and the Attorney-General in such a case as the present has a right to present his information, for a reason which does not appear to have been considered in the previous argument. That is, that the District Courts are not dependent for their criminal jurisdiction solely upon the enactment of section 8 of the Criminal Procedure Code, for that, six years after such power was given to it, section 66 of the Courts Ordinance, in (like section 8 of the Code) giving a District Court full power and authority to hear, try, and determine all prosecutions and charges instituted and preferred before it against any person for any crime committed within its district, did not limit that power and authority to be "subject to the provisions of this Code" as that section 8 had done. Section 8 enacted, "shall have, as "heretofore, and subject to the provisions of this Code, cognizance "of and full power to hear, try, and determine." The provisions of the Code were to rule the District Court in everything in its cognizance of and its power to try and determine all prosecutions. Section 66 says nothing of cognizance or subjection to the Criminal Procedure Code, but "shall have full power and authority ..... to hear and determine," and makes only a limitation in regard to the procedure inside the Court itself that it shall be "in manner in the Criminal Procedure Code ..... provided." The jurisdiction so conferred is not fettered by the provisions of section 13 of the Criminal Procedure Code, and a prosecution of the character of the present will be permissible so long as it is conducted as prescribed by chapter 21 (omitting sections 263–4, which are inapplicable). This safeguard however exists, that the Attorney-General or his nominee shall conduct the prosecution,

wherein I consider is included the framing of the charge or information or indictment, for I do not see that under section 261 it would be competent for any private person to appear and do so.

Section 4 of the Criminal Procedure Code requires that all offences under any such enactment as the Merchandise Marks Ordinance shall be inquired into and tried according to the provisions of that Code, subject to any enactment for the time being in force regulating the manner or place of inquiry into or trying such offence. And now that the ruling of this Court has made it clear that, as soon as the accused's election of the District Court removes the prosecution instantly thither, this section I read as meaning in such a matter as the present that the offence is to be inquired into and tried under the provisions of chapter 21 only, it being (with the supplementary chapter 24) the only provisions relating to trials by a District Court.

I therefore hold that the District Court had jurisdiction to inquire into and determine the matter of this prosecution.

I further hold that the accused appellant was rightly convicted. I give the same credence as the Court below has given to the evidence of the witnesses, and I do not see that the certificate, which bears the seal of the Colonial Secretary's Office, and is signed "True copy : H. W. Green, for Colonial Secretary," was improperly received in evidence under the provisions of section 27 of Ordinance No. 14 of 1888. I presume, until the contrary is shown, that this Assistant to the Colonial Secretary so signed by some authorization as section 2 of that Ordinance contemplates.