RODE *v.* BAWA.

1896.

P. C., Badulla, 16,009.

May 6, 8, and 19.

Administration of justice by Magistrates—Inexpediency of a Superintendent of Police trying, as Police Magistrate, complaints of street nuisances and resistance to the Police.

The Superintendent of Police for the Province of Uva had been appointed Additional Police Magistrate of the Police Court of Badulla. There having been complaints of street nuisances in the town of Badulla, the Superintendent gave orders that all offenders should be arrested and prosecuted. Acting upon these orders a police officer arrested appellant, without a warrant, for committing a nuisance in his view; and as appellant resisted the arrest, he charged him with not only committing a nuisance, but obstructing him in the execution of his duty. Appellant was brought before the Superintendent sitting as Additional Police Magistrate, tried by him, and convicted on both charges.

Held by BONSER, C.J., that the conviction could not stand. The principle applicable to a case like this is that the administration of justice by Magistrates should be clear from all suspicion of unfairness. That justice should be believed by the public to be unbiassed is almost as important as that it should be in fact unbiassed.

Per LAWRIE, J.—An officer of the police cannot take part either as Judge or investigating Magistrate in cases in which members of the police are personally interested, the disqualification being not that the Magistrate has a direct interest, but that the parties before him are those over whom he has control, and in the maintenance of whose position and authority he is interested.

LAWRIE, J., would however sustain the conviction for committing nuisance, the Magistrate having had no interest in the prosecution for that offence either of a personal or pecuniary nature, and no bias either against or in favour of the accused.

THE facts of the case appear sufficiently in the judgment of Bonser, C.J.

Bawa, for appellant. The Police Magistrate belonged to the same class as the prosecutor—the police. There would be a reasonable apprehension of *bias*—actual *bias* was not suggested.

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In *Regina v. Huggins, 1895, 1 Q. B. 565*, the conviction was quashed where only one of a bench of six justices was held disqualified. Further, the Magistrate, as Superintendent of Police, had specially directed prosecution in such cases. The case, *Christoffelsz v. Slema Lebbe, 1 C. L. R. 5*, was in point.

Cooke, C. C., for respondent.

Cur. adv. vult.

19th May, 1896. BONSER, C.J.—

In this case I reserved the question raised by Mr. Bawa, as to the legality of a police officer exercising judicial functions as a Police Magistrate in a case in which a police officer subordinate to him was prosecuting, to be heard before two Judges. I desired also to have the assistance of an argument in support of the conviction, and Mr. Cooke argued the case on behalf of the Attorney-General. It appears that the Superintendent of Police for the Province of Uva has been appointed to be an Additional Police Magistrate of the Police Court of Badulla. There having been complaints of street nuisances in the town of Badulla, the Superintendent of Police gave orders that all offenders should be arrested and prosecuted. Acting upon these orders, a police officer arrested the appellant, without a warrant, for committing a nuisance in his view; and as the appellant resisted the arrest, he charged him not only with committing a nuisance, but with obstructing him in the execution of his duty, by assaulting him. The appellant was brought before the Superintendent of Police sitting in his capacity as Additional Police Magistrate, tried by him, and convicted on both charges. The question is whether this conviction can stand. There is no case exactly like this to be found in the books, for I suppose such a case never happened before. A police officer exercising judicial functions is to me a complete novelty. English Judges of the greatest eminence have repeatedly expressed the strongest disapproval of a police officer conducting a prosecution before Magistrates, on the ground apparently that the duty and interest of the police officer being to secure a conviction, he could not be expected to lay the facts before the Court in the dispassionate manner which ought to characterize the conduct of a prosecution. The principle which should be applied to a case like this is simple. The difficulty is in its application. That principle is that the administration of justice by Magistrates should be clear from all suspicion of unfairness. That justice should be believed by the public to be unbiassed is almost as important as that it should be in fact unbiassed. At this point it is right to state that no imputation of actual unfairness was made or suggested against this Magistrate

by Mr. Bawa. I do not find in any of the cases to which I have referred in considering this question, that the Court has ever gone into the question of actual bias. The real question in these cases, as was stated by Wills, J., in *Regina v. Huggins*, *1895*, *1 Q. B. 565*, is this—"Was there a reasonable apprehension of "bias?" In that case, which is the latest English case on this subject, an unqualified pilot was charged with acting as a pilot after a qualified pilot had offered to pilot the ship, and was conducted by a court of six justices, one of whom was a licensed pilot, but who for forty-three years had held a position in which there was no competition between himself and the unlicensed pilots. It was held that the fact that one of the six was a licensed pilot vitiated the conviction. The Court there stated that there was no question of the Magistrate having any pecuniary interest, nor was it suggested that he had any actual bias; but the judgment was based on the principle above stated. In the present case the Magistrate is the police officer in charge of his district; he is responsible for its peace and good order. If he fails to keep his district free from crime, or at least from undetected crime, he is liable to censure from his superior officer, the Inspector-General of Police; while if he is energetic in bringing criminals to justice, he earns corresponding praise. His duty and his interest coincide in the prompt suppression of all crimes and offences and in making an example of offenders. It must be difficult for a man in such a position to assume a thoroughly impartial attitude. Mr. Cooke argued that as he would know the character of the policemen who came to give evidence before him, he would be in a better position to judge of the value and weight to be given to their evidence. But this very argument points to a ground of disqualification. It suggests that he will have preconceived opinions with regard to certain evidence. The *esprit de corps* of a police force is proverbial, and it is but natural for a superior officer to support his subordinates, especially when they are carrying out his own orders. I cannot say that an accused person, seeing himself charged by one police officer and tried by another, might not reasonably feel some apprehension as to the impartiality of the tribunal. I am therefore of opinion that the conviction should be quashed. I thus arrive at the same result as my brother Lawrie; but I go a little further than he does, agreeing as I do with what was said by the Court in *Regina v. Huggins*, "that it is far safer to enlarge the "area of this class of objection to the qualification of justices than "to restrict it." It should be remarked that cases tried summarily by Magistrates are withdrawn from the constitutional tribunal—

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a judge with a jury—and therefore the proceedings of Magistrate sitting in summary jurisdiction have always been jealously scrutinized by the Superior Courts.

The foregoing observations apply to the case where the Magistrate is exercising judicial functions in the strict sense of the term, that is to say, when he is trying cases summarily. They do not apply with the same force to a case where the Magistrate is exercising the ministerial functions of holding an inquiry with the view of committing the accused for trial to a Higher Court.

LAWRIE, J.—

When the case was last before this Court, the Chief Justice held that it was proved that the appellant was guilty of both the offences of which he had been charged. There remains, however the question of law, whether the Acting Magistrate was disqualified from trying the charges of committing nuisance and of resisting the police. The Acting Police Magistrate is the senior officer of police of the Province, in which he has been appointed by His Excellency to act as Additional Police Magistrate. He in his capacity of Police Superintendent had given orders to sergeants and constables to be strict about business. He had not directed the prosecution of the accused. If it be lawful for the Governor to appoint an officer of police to be an Acting Magistrate, then in my opinion it was not beyond Mr. Gordon Cumming's power to try this simple charge of committing a nuisance on the public street. The Magistrate had no interest in the prosecution either of a personal or pecuniary nature. It seems to be impossible to hold that he had the slightest bias either against or in favour of a Moorman accused of committing a petty nuisance. I cannot imagine that any one could seriously think that the senior officer of police would take a different view of the evidence, or would punish more severely than the permanent Police Magistrate. With regard to the charge of resisting the police in the execution of their duty, I am of the opinion, however, that the Acting Police Magistrate was disqualified.

It seems to me that an officer of the police cannot take part either as judge or investigating Magistrate in cases in which members of the police are personally interested. The disqualification is not that the Magistrate has a direct interest, but that the parties before him are those over whom he has control, and in the maintenance of whose position and authority he cannot but be interested. Although I would sustain the conviction for committing nuisance, I am content to quash the whole proceedings. It is inconvenient to quash a part and to leave a part.