1895.
October 23.

SINNATANGAM *v.* SINNEN.

P. C., Jaffna, 15,535.

Contempt of Court—Disobedience of order of Court—Admission made in a former proceeding—Conviction upon such admission—Alterations in the record.

In order to find a person guilty of contempt for disobeying an order of Court, it is necessary that such order should have been duly drawn up by the Court.

An accused, who had admitted the truth of the charges brought against him, having been once discharged, on his undertaking to do certain things, it is not competent for a Magistrate, upon finding that the accused had failed to fulfil his undertaking, to convict him upon his previous admission.

If a Magistrate make any alteration or addition in any proceeding, he should note in the margin the date of such alteration or addition and initial it.

UPON a petition presented by the defendant praying for a revision of the order of the Police Court made on the 21st of September, 1895, the Supreme Court delivered the following judgments :—

23rd October, 1895. WITHERS, J.—

The matter of these revision proceedings is briefly as follows : On the 6th August, 1895, one Sinnatangam presented a complaint to the Police Magistrate of Jaffna, in which she charged the petitioner in revision and his daughter with various offences, viz., criminal trespass, voluntarily causing hurt, and theft from the person.

On the day fixed for the inquiry, viz., the 17th August, the parties appeared before the Magistrate, and on it being represented by complainant's counsel that the parties were disputing about a piece of land alleged to belong to the complainant, which the defendants would not quit, this journal entry was made :—

"The complainant undertakes to pay Rs. 2 to enable accused to "put up a house for themselves. The accused undertake to quit

"the house within three weeks from this date, that is, before the "7th of next month. So ordered.

"The complainant withdraws the case. Accused discharged.

"G. W. WOODHOUSE,
"Police Magistrate."

The next step occurred on the 21st September, on which this entry appears :—

"The accused, (1) Sinnan and (2) Vainar Saravanai, are called "upon to show cause why they should not be fined for the "admission made on August 17, and for not obeying the order of "this Court. Vainar Saravanai states: 'I was deceived. The "'complainant has nothing to do with the land. I will not quit "'the land. Ariacutti and I own this land in common.'"

And the following judgment was delivered :—

"The accused admitted the charge on the 17th August and "undertook to quit the land, and the Court directed them to do so.

"The second accused now calmly comes into Court and says "that he will not abide by the order of Court.

"This is a case of contempt of Court, which aggravates the "offence, and I adjudge second accused guilty on his own state- "ment of the charge made against him by complainant under "section 314 of the Ceylon Penal Code, and sentence him to pay "a fine of Rs. 25, or in default to undergo one month's rigorous "imprisonment.

"The first accused is second accused's daughter. She is dis- "charged with a warning.

"G. W. WOODHOUSE,
"Police Magistrate."

This not being an appealable judgment, the party condemned petitioned to have it brought up in revision and quashed, and I directed that, upon due notice to the parties and the Police Magistrate, the judgment should be brought up in revision.

It is clear that the judgment cannot be sustained. No order of the Court was drawn up which the petitioner could have obeyed or disobeyed, and hence he would not be guilty of contempt for refusing to abide by an order which did not exist.

If the petitioner was punished for one or more of the offences before referred to, on his own admission, that was clearly wrong, because the Magistrate had discharged the man, and was *functus officio qua* those proceedings.

I may be wrong, but it appears as if some passages marked in blue pencil in the entries of the 17th August and 21st September had been written in since my perusal of the record, which I called for after reading the petition in revision. Unless

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my memory fails me, the petitioner was adjudged guilty for contempt of the Court's order and for that only, and I should like to know if I am mistaken. But on neither ground, of "admission" or contempt of Court, can the judgment be sustained, as the Magistrate, in his letter to this Court, has shown no cause why his judgment should not be disturbed.

The judgment and proceedings had upon the complaint in case No. 15,535 of the Police Court of Jaffna of the 6th August should, in my opinion, be quashed.

BONSER, C.J.—

I agree that the proceedings should be quashed as altogether irregular. The Police Magistrate no doubt acted with the best of intentions, and desired to do what he could to bring the dispute between the parties to a speedy and satisfactory conclusion. But in so doing he has acted *ultra vires*. The law may be defective, as he points out, but the Magistrate is not a legislator, and he must give effect to the law as it stands : he must make the best of it. He has convicted a man of an offence on a charge from which he had been previously discharged on the 17th of August last, and he has convicted him on what, he says, is an admission made by him on that day. But there is no record of any such admission. Even if there had been, that admission made in a previous proceeding, from which the accused had been discharged, would not avail to support a subsequent conviction.

There is another matter which should be mentioned. My brother Withers, before whom this record came first, and who ordered it to be sent for the observations of the Magistrate, is of opinion that it is not in the same state as it was then. Certainly there are interpolations in the record in different coloured ink. The Magistrate should be called upon for an explanation as to whether he did make any alterations in the record, for if he did that, his act was quite irregular. If he did make any alteration, he should have a note in the margin initialled by him to show when the alteration or addition was made.