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ANDRIS v. JUANIS et al.

P. C., Galle, 20,984.

"The Oaths Ordinance, 189," s. 12, clause 1—Prompt punishment for perjury—Procedure to be adopted—Scope of the Ordinance.

Clause 1 of section 12 of Ordinance No. 9 of 1895 gives power to Courts, if they are of opinion that false evidence within the meaning of section 188 of the Ceylon Penal Code has been given by any witness, to summarily punish him as for a contempt of court. But this power must be exercised in accordance with established legal principles, and a witness, before he is punished under this section, must be informed of the facts constituting his offence, and given an opportunity of explanation.

Per BONSER, C.J.—Punishment under clause 1 of section 12 of Ordinance No. 9 of 1895 should only be used in cases where it is clear on the face of the proceedings that witnesses have been guilty of wilfully giving false evidence, not in cases where there is a conflict of testimony. In the latter class of cases Magistrates will do well to exercise one of the alternative courses open to them under section 12.*

Observations by LAWRIE, J., on the inexpediency of the change in the law as to punishment for perjury effected by Ordinance No. 9 of 1895.

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

Van Langenberg, for appellant.

Bawa, for respondent.

Cur. adv. vult.

26th June, 1896. BONSER, C.J.—

This appeal came before me originally sitting alone, but inasmuch as this was the first case in which an order made under section 12 of the Ordinance No. 9 of 1895 had come before this Court, I reserved the case to be heard before the Full Court, being of opinion that it was desirable that an authoritative ruling should be issued by this Court for the guidance of District Judges and Magistrates in the exercise of the powers given by that section.

* Section 12, clause 4: "In lieu of exercising the power given by this section, the Court may, if it thinks fit, transmit the record of the judicial proceeding to the Attorney-General to enable him to exercise the powers conferred on him by 'The Criminal Procedure Code, 1883,' or proceed in manner provided by section 443 of 'The Criminal Procedure Code, 1883,' or by section 835 of 'The Civil Procedure Code, 1889.'"

It appears that two of the appellants brought a charge against certain men of having assaulted them and robbed them of some money. The Police Magistrate, after hearing the evidence of these two appellants and of third appellant, a local Police Officer, who gave evidence in support of the charge, and after hearing some evidence on behalf of the accused, stopped the case and discharged the accused, giving his reasons in the following words :—

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“ It is unnecessary to record further evidence for the defence
“ There was a quarrel in connection with a debt for milk, and
“ blows were exchanged. Police Officer of Labuduwa, complainant’s
“ uncle, came to the spot, and this false charge of robbery was
“ hastily concocted, but fortunately there was no time to arrange
“ details and drill the witnesses. The following are some salient
“ points which show the falseness of the evidence. Complainant
“ says the Police Officer came to him when he was working with
“ other coolies on the top of a hill and gave him the notes to change ;
“ his brother Hendrick never worked on the estate, and was not
“ there yesterday ; no trade in milk was ever carried on by his
“ father ; he was within sight of Hendrick when the latter was robbed.
“ Police Officer of Labuduwa gave complainant the notes at the
“ store after all work was over, and did not go up the hill at all.
“ Hendrick never worked on the estate.

“ Hendrick says he has worked on this estate for the last six
“ months ; worked there in complainant’s gang yesterday ; saw
“ Police Officer of Labuduwa come up the hill and speak about the
“ money, and afterwards give the notes to the complainant at the
“ store ; he (Hendrick) then left a little before the complainant,
“ and complainant was not in sight when he (Hendrick) was
“ attacked. Accused discharged.”

The Magistrate then proceeded without more to fine the appellants Rs. 50, and made the following entry in the record :—“ In my
“ opinion these three witnesses have all given false evidence in
“ open Court in this judicial proceeding, and I sentence them each
“ (K. V. Andris, K. V. Hendrick, J. Cornelis de Silva, Police Officer)
“ to pay a fine of Rs. 50, in default to undergo one month’s rigorous
“ imprisonment each. Section 12, clause 1, of Ordinance No. 9 of
“ 1895.”

The section under which this order was made was intended to provide a prompt punishment for the perjury which is unfortunately so rife in our Courts. It is an axiom in penology, that a light punishment following with certainty close upon the offence is far more efficacious than the mere chance of a much heavier

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punishment which may never be inflicted. Experience has shown that prosecutions for perjury are so rare and so seldom successful that the risk of punishment may safely be disregarded by any one who is minded to commit the offence. This section gives power to Courts, if they are of opinion that false evidence within the meaning of section 188 of the Ceylon Penal Code has been given by any witness, to summarily punish him as for a contempt of court—the punishment in the case of a Police Court being by fine not exceeding Rs. 50, and in default of payment rigorous imprisonment extending to two months. But this power must be exercised in accordance with established legal principles. It is an elementary principle of justice that no man is to be condemned unheard ; in other words, no man is to be punished for a criminal offence without a distinct statement of the facts alleged against him as constituting that offence, and an offer to hear what he has to say. The most summary method of punishment with which I am acquainted is that used in cases of contempt of a Superior Court committed in the face of the Court ; but even in a case of that kind it was held by the Privy Council that an order was bad which did not satisfy the conditions I have just mentioned (*re Pollard L. R. 2 P. C. 106*).

In the present case these men were fined without its being first stated to them what the facts were which constituted the offence, and without giving them an opportunity of explanation.

Such an order cannot possibly stand.

The order will be quashed, and the Magistrate directed to send the record to the Attorney-General.

I would add that in my opinion this summary procedure should only be used in cases where it is clear on the face of the proceedings that witnesses have been guilty of wilfully giving false evidence, not in cases where there is a conflict of testimony. In the latter class of cases Magistrates will do well to exercise one of the alternative courses open to them under section 12 of the Ordinance.

LAWRIE, J.—

By the Penal Code it is enacted that “every person shall be liable to punishment under the Code, and not otherwise, for every act or omission contrary to the provisions thereof of which he shall be guilty within this colony after the Code comes into operation.” The Penal Code in chapter XI. specially deals with the crime of giving false evidence. To the Supreme Court is given exclusive jurisdiction to try some forms of false evidence, and to the District Court to try other kinds of false

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evidence. The judgments are severe : death, ten years, and seven years. No jurisdiction is given to the Police Courts to try perjury. It is contended that by "The Oaths Ordinance, 1895," the law as to the punishment of perjury has been entirely changed. Perjury of the gravest kind (it is said) may now be punished by Civil or Criminal Court by the small fine of Rs. 50 or by imprisonment not exceeding two months, and the same section enacts that any person who has undergone any sentence of imprisonment or fine imposed under this section shall not be liable to be punished again for the same offence. I am assured that this change in the law was deliberately intended. I can only express surprise and regret at the change of the law for the worse. Here are two Ordinances both in operation : the one (our established Penal Code) makes perjury a heinous offence, and the other (the Oaths Ordinance) makes it a very trivial one. It is left entirely to the discretion of a Judge or a Magistrate how perjury shall be punished. If a small fine is imposed, there is no appeal even at the instance of the Attorney-General, and perjurers, if they are wise, will never appeal when they have been dealt with under the Oaths Ordinance, lest a worse fate befall them. In the present case the accused had a proctor, who has incautiously appealed, and it is open to this Court to set aside the sentence and to do justice. The Police Magistrate was of opinion that these appellants gave false evidence to secure the conviction for robbery of an innocent man. This serious perjury cannot adequately be punished by a Police Magistrate by a small fine, nor indeed can so serious an offence be summarily dealt with without a trial. For this reason I approve of the order being set aside, and the record being sent to the Attorney-General. Some venial cases of giving false evidence in civil and in summary criminal cases may perhaps, without impropriety, be punished "as for a contempt of Court" as section 12 of the Oaths Ordinance says. In such cases the Judge must follow the course laid down by Phear, C.J., following the Privy Council judgment in *re Pollard* (2 S. C. C. 8). If the Legislature has given District Court Judges and Commissioners of Requests and Magistrates power to punish perjury summarily without trial by a fine not exceeding Rs. 50 or by imprisonment for not less than two months, I am humbly of opinion that the Oaths Ordinance ought to be repealed, or at least amended.

WITHERS, J.—

I agree in the order pronounced by the Chief Justice. Because the Oaths Act empowers a Judge summarily to sentence or fine,

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as for contempt of Court, a witness who in that Judge's opinion has given false evidence before him within the meaning of section 188 of the Ceylon Penal Code, it does not follow that the judge is to dispense with elementary and fundamental principles of justice. Justice requires that before sentence is pronounced the witness shall be informed what false statement he has made which the Judge considers deserving of prompt punishment, and should be asked to explain, if he can, his conduct in making that statement. It may be that his answer will satisfy the Judge, and then the suspended sword will not fall.

