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FERNANDO *v.* FERNANDO.

D. C. (Criminal), Kalutara, 733/49.

Inquiry by Police Magistrate—Adjournment of case—Summary trial of such case by officer who was both Police Magistrate and District Judge—Appearance on behalf of the Attorney-General—Liability of accused giving false evidence to be convicted of perjury—Ordinance No. 8 of 1896.

A summary trial under Ordinance No. 8 of 1896 does not mean a trial which is not in due form of law, nor a trial held forthwith, nor one with evidence inferior in amount or quality. It means a trial without the formality of a preliminary inquiry and commitment.

It being provided in the Ordinance No. 8 of 1896 that where a Police Court and a District Court are presided over by one and the same officer, it shall not be obligatory on the Police Magistrate to proceed under chapter XVI. of the Criminal Procedure Code with a view to commitment of the accused, but that it shall be lawful for him, in his capacity of District Judge, to hear the case without any commitment and to determine it, it is not regular for an officer who is both Police Magistrate and District Judge to interfere with, and assume jurisdiction to try, a case which had been begun and adjourned by an officer who was Police Magistrate only.

When a District Judge tries a case summarily under Ordinance No. 8 of 1896 the prosecution should be conducted by the "Attorney-General," or by some officer empowered by him in that behalf as required by section 261 of the Criminal Procedure Code.

An accused who gives evidence on his own behalf is liable to be convicted of perjury if he gives false evidence.

THE facts are sufficiently set forth in the judgment.

Dornhorst, for appellant.

25th March, 1897. BONSER, C.J.—

In this case it appears to me that the procedure laid down by Ordinance No. 8 of 1896 has been misunderstood. It is a very

useful Ordinance if properly worked. It is intended to provide for cases, which are not infrequent, where the same officer fills the offices of Police Magistrate and District Judge. Before that Ordinance, if a case was brought before the Police Court which was not within the jurisdiction of the Police Magistrate to try, but was within the jurisdiction of the District Court, the Police Magistrate had to hold an inquiry under chapter XVI. of the Criminal Procedure Code, with a view to the commitment of the case to the District Court, of which he himself was the Judge.

It was thought by the Legislature that this was an unnecessarily cumbrous procedure—that in such a case it would be proper to allow the Police Magistrate to transfer the case without any commitment for trial to the District Court, and then to try it summarily under the procedure provided by chapter XIX. for cases summarily triable by a Police Court, and accordingly Ordinance No. 8 of 1896 was passed. But it will be noted that the Ordinance provides expressly that he is to try the case "in his "capacity as District Judge." The preamble to and the title of the Ordinance shows that the sole object of the Ordinance was to get rid of the necessity for a preliminary inquiry and commitment and to enable cases to be tried summarily. A summary trial does not mean a trial which is not in due form of law. It does not mean a trial held forthwith, or a trial with evidence inferior in amount or quality, but it means a trial without the formality of a preliminary inquiry and commitment. In the present case a woman called Maria Fernando filed a complaint in the Police Court of Kalutara before Mr. Constantine, who is a Magistrate of that Court, complaining that the appellant, with two other persons named, voluntarily caused hurt to her by stabbing and wounding her with a knife, and that they at the same time and place committed robbery by stealing and taking away a pair of silver bangles of the value of Rs. 8 and a coral necklace worth Re. 1. She prayed for warrant against the second and third accused. It was not necessary to pray for a warrant against the appellant, because he was brought up by the police. She also on the same day made the same complaint of hurt and robbery at the police station. Mr. Constantine did not hold the dual office of District Judge and Police Magistrate, so the Ordinance to which I have referred did not apply to him. He very properly followed the procedure laid down by section 156 of the Criminal Procedure Code, and examined the complainant on affirmation. She bore out to the full the allegations made in the complaint. The Magistrate ordered summons to issue to bring up the third accused. He did not apparently think fit to proceed against the second

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accused, because she was a woman—the wife of the appellant—and did not appear to have taken an active part in the robbery and hurt. It will be seen that the case was one which Mr. Constantine had no power to deal with under Ordinance No. 8 of 1896. All he could do was to instruct an inquiry with a view to commitment to a higher court. Mr. Constantine adjourned the inquiry to the 26th of January.

On the 26th January another Police Magistrate appears to have been sitting, who was also District Judge of Kalutara. He took the case out of Mr. Constantine's hands and proceeded to deal with it under Ordinance No. 8 of 1896. Now, there was no necessity for his doing that. That was not a course which was provided for by the Ordinance, because the case was already in the hands of a Police Magistrate who was not District Judge. and there would be no embarrassment or difficulty about his committing the case to the District Court of which he was not the Judge. It seems to me that it was irregular for the District Judge to act as he did in this case. However, he proceeded to try it summarily as District Judge; but in my opinion the trial was not conducted as the law requires. It must be remembered that this was a trial before the District Court. True it was a summary trial without a commitment; at the same time it was a trial before the District Court. Now, section 261 of the Criminal Procedure Code provides that in every trial before the District Court the prosecution shall be conducted by the Attorney-General or by some officer empowered by him in that behalf. The reason for that provision is obvious. Offences tried before a District Court are serious offences; they are offences in which the public are interested; they are not mere petty thefts or assaults arising out of quarrels between individuals with which the public have nothing to do, and the prosecution of which may very well be left to the aggrieved parties. The prosecution in all serious cases ought to be conducted by a responsible officer. Of course the Attorney-General cannot conduct prosecutions in person, but the policy of the law is that some officer responsible to him is to have charge of these prosecutions. It is his duty to see that all material witnesses are called, that all the important facts of the case are properly brought out, as well in the interest of the prosecution as of the defence; in short, to see that a fair trial takes place. Now, in the present case, it appears that a gentleman who is described as the Korale Mudaliyar was allowed to interfere in this prosecution. Objection to this was taken then and there by the defendant's pleader, but the District Judge over-ruled the objection. He says that the Mudaliyar did not conduct the prosecution,

that he merely called the witnesses for the prosecution and cross-examined the accused's witnesses. He was a complete stranger. The District Judge suggests that even if he did conduct the prosecution it was legal, because section 256 of the Criminal Procedure Code provides that a Magistrate of a Police Court trying any case may permit any person to conduct the prosecution. The answer to that is, that he was not a Police Magistrate trying a case summarily. He was a District Judge trying a case summarily, and therefore that section had no application.

For these reasons, I am of opinion that this trial was not conducted in accordance with law.

Then, to go to the merits of the case. [Upon the merits his Lordship held that though the accused did not deliberately stab the complainant, he had committed perjury while giving evidence on his own behalf. His Lordship then proceeded as follows :—]

Under these circumstances, while quashing the proceedings for irregularity, I do not think it necessary to order a new trial. If the Attorney-General thinks it a case which he ought to prosecute further, he will be at liberty to do so. At the same time I do think it necessary that the deliberate untruth of the appellant in denying that he was present should not be allowed to pass without notice. Persons who give evidence on their own behalf are under temptation to say what is untrue. But if it becomes the recognized practice for persons in that position to tell untruths with impunity, the result will be that no one will attach any importance to what an accused person giving evidence for himself may say, and that will be a consequence most injurious to innocent accused—an innocent man telling the truth runs the risk of his evidence being discredited.

Therefore, I direct the case to be sent to the Attorney-General with the view of proceedings being taken against the appellant for perjury.