MOHIDEEN *v.* NAMBIRALE *et al.*

1896.
August 12 and 19.

P. C., Anurádhapura, 17,938.

" The Oaths Ordinance, 1895," ss. 8 and 9—Decisory oath in criminal proceedings—How far it binds the accused—Scope of the Ordinance in criminal matters.

Under " The Oaths Ordinance, 1895," when parties to civil suits agree to be bound by an oath, it is conclusive ; but it is not so in criminal proceedings.

So, where an accused party offered to be bound by a particular form of oath to be taken by a witness for the prosecution, *held*, that the Court was not right in accepting such offer and convicting the accused on the evidence given on such oath.

If after evidence is taken on an unusual form of oath, an accused person asks to be allowed to withdraw his claim to be tried and to plead guilty, the Court may allow that plea to be recorded and then sentence him ; but so long as the claim to be tried stands, the Court cannot convict except on sufficient evidence.

All that the Oaths Ordinance does, as to criminal proceedings, is to allow evidence to be given under the sanction of an oath more particularly binding on the conscience of the witness than the oath or affirmation in ordinary use in our Courts. The effect of the evidence so given is the same as that given after the usual affirmation has been taken.

THE accused in this case were charged with house-breaking by night and theft. They claimed to be tried, and in the course of the trial offered to be bound by the evidence of a witness for the prosecution, if such evidence was given under a particular form of oath suggested by the accused. The Police Magistrate accepted the offer, and on statements made by the witness on the oath suggested by the accused convicted them. The accused appealed.

Dornhorst, for appellant.

Cur. adv. vult.

August 17, 1896. LAWRIE, J.—

As the Police Magistrate himself admits this charge of house-breaking by night with theft of property above Rs. 100 ought to have gone before the District Court, the reasons which induced the Magistrate to hold that it could be dealt with by him summarily are not recorded. I do not know what they were. A strong case was made against the accused, and they were called on for their defence. Their Proctor re-called Banda, a witness for the prosecution, when the accused said that if Banda would swear on the Jétawanáráma that he saw the three accused running away from the direction of the complainant's house, they were ready to undergo any punishment the Court might award. The Magistrate then sent the accused and the witness Banda with the Kachchéri Mohandiram to the Jétawanáráma. The accused pointed out a spot where Banda should swear, and then Banda, kneeling down, said : " On the night of the theft I saw

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"these three accused [pointing out to them] running away from "the direction of the complainant's house. If what I say is not the "truth, within seven days let me be struck with lightning: let "me die."

The accused said they were satisfied, and the Kachchéri Muhandiram reported to the Court.

The Magistrate thinks this was regular under the Ordinance No. 9 of 1895, section 9, and he holds that the oath of Banda must be held to be conclusive.

I am not of the same opinion. I think that the performance vitiates the whole proceedings. Certainly, it is in no way conclusive.

The 9th section of the Oaths Ordinance provides that "if in any "judicial proceeding of a criminal nature the accused person desires "that any witness for the prosecution shall make any such oath "or affirmation, the Court may, if it thinks fit, ask such witness or "cause him to be asked whether or not he will make the oath or "affirmation." Such oath or affirmation refers to the 8th section. That is an *oath or solemn affirmation in any form common amongst or held binding* by persons of the race or persuasion to which he belongs and not repugnant to justice or decency.

The Magistrate has omitted to state whether Banda agreed to take an oath at Jétawanáráma. I presume he said he was willing. The form of the oath was neither known to nor approved of by the Magistrate. All he knew was that it was to be taken at the dágoba. The witness used such words and imprecations as he chose. The Magistrate holds that the evidence taken and the sanction on this oath is conclusive against the accused, but that I think is wrong. When parties to civil suits agree to be bound by an oath it is conclusive, but no conclusiveness is given in criminal cases. Here, no doubt, the accused offered to be bound, but that offer could not be accepted by the Court. If after the evidence taken on unusual form of oath accused persons asked to withdraw their claim to be tried and to plead guilty, the Court might allow that plea to be recorded and then sentence them; but so long as the claim to be tried stands, the Court cannot convict except on sufficient evidence. All that the Oaths Ordinance does in this matter is in certain cases to allow evidence to be given under the sanction of an oath more particularly binding on the conscience of the witness than the oath or affirmation in ordinary use in our Courts. The effect of the evidence so given is the same as that given after the usual affirmation has been taken.

The Police Magistrate has convicted the accused on the footing that the evidence of Banda was conclusive. It was not so. I must quash these proceedings.