

1901.

December 11.

JAMES v. LATIFF.

P. C., Hambantota, 2,834.

*Disqualification of Magistrate—Plaint by police constable—Magistrate trying case, also Assistant Agent and Superintendent of Police.*

A Magistrate whose primary duty is not to superintend the Police, though holding the office of Superintendent of the Police, is not disqualified to hear a case of hurt instituted by a police constable.

*Rode v. Bawa* (1 N. L. R. 373) explained.

ON appeal against a conviction for voluntarily causing hurt—

*Bawa*, for accused, appellant.—This conviction is bad on the ground that the Magistrate who tried it is also a Superintendent of Police. Mr. Horsburgh, the Magistrate in this case, is Assistant Government Agent at Hambantota, and is also *ex officio* a Superintendent of the Police. The decision of this Court in *Rode v. Bawa* (1 N. L. R. 373), that a Police Official, who is also a Police Magistrate, cannot properly convict on a Police prosecution, applies.

[BONSER, C.J.—The present case is different. Mr. Horsburgh is not really actively associated with the police. In the case cited I thought that the accused had some ground for suspecting bias, because it was the Superintendent of Police who acted as Police Magistrate.] 1901. December 11.

11th December, 1901. BONSER, C.J.—

The appeal in this case is on a point of law. It is said that the Magistrate who adjudicated upon it was disqualified from so doing. In this case the charge was brought by a police constable against the appellant for causing hurt to him. It was heard by Mr. Horsburgh, Assistant Government Agent of Hambantota, and the appellant was fined Rs. 15. The case was a trifling one. Now, it appears that Mr. Horsburgh, in addition to being Assistant Government Agent and Police Magistrate, is also the general Superintendent of the Police Force in his district. He is not a member of the Police Force in the ordinary sense of the term. That circumstance appears to me to distinguish this case from the case which was relied upon by the appellant, viz., *Rode v. Bawa* (1 N. L. R. 373), decided by Mr. Justice Lawrie and myself. In that case what I may call the real appointment held by the Police Magistrate was of Superintendent of Police, but to that had been added temporarily the office of Additional Police Magistrate. We held in that case that he was so identified by the fact that he was Superintendent of Police with the members of his force that there was a reasonable fear, a reasonable apprehension, of bias in his case, and that, even though there was no actual bias, a person, brought before him and charged by another Police Officer, might reasonably suppose that he might be biased. Reference was made to the proverbial *esprit de corps* which existed in the Police Force. Now, in this case I do not think that case can apply, for superintendence of the police was not the primary duty of the Magistrate here, as it was in that *Badulla* case, and therefore the objection urged by Mr. Bawa fails.

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