

[IN REVISION.]

Nov. 23, 1910

Present : Hutchinson C.J.

THE ATTORNEY-GENERAL v. SAMARAKOON *et al.*

*D. C. (Criminal), Colombo, 2,693.*

*Revision—Application by Attorney-General for enhancement of punishment—Criminal Procedure Code, ss. 335–338, 356, and 357.*

Where there has been a conviction and lawful sentence in a District Court criminal case, the Attorney-General has no right to appeal for enhancement of punishment ; he ought to move by way of revision.

THE respondents were tried along with several others on an indictment charging them with unlawful assembly, riot, arson, and causing hurt to three women in the course of the forcible assertion by the respondents of their claim to a piece of

<sup>1</sup> (1906) 5 *Tam.* 88.

<sup>2</sup> (1887) 1 *L. R.* 10 *Mad.* 165.

<sup>3</sup> (1898) 4 *Bal.* 133.

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land of which the complainants (women) were in possession. They were convicted on all the charges, and some of them were sentenced to pay fines amounting to Rs. 700 each, and others to fines of Rs. 100 each. None of them appealed. The Attorney-General applied for revision of the sentences on the ground that this was not a case proper for a fine, and that a substantial term of imprisonment ought to have been imposed.

*Bawa*, for the respondents. —The Attorney-General did not appeal against the sentence, though he had the right to do so. It is not open to him to move the Supreme Court by way of revision. Counsel referred to *Perera v. Silva*,<sup>1</sup> *Goonawardane v. Orr*.<sup>2</sup>

*Van Langenberg, S.-G.*, for the Attorney-General.—Section 338 of the Criminal Procedure Code, which gives a right of appeal, subject to the provisions of sections 335 and 336, to persons dissatisfied with any judgment or final order, expressly says that the appeal lies for *any error in law or in fact*. In this case there is no error in law or fact which the Attorney-General can appeal against [Hutchinson C.J.—What was the practice hitherto?] The Attorney-General has appealed in similar cases, and has also moved the Supreme Court by way of revision. No objection appears to have been taken to either procedure. Counsel asked for a ruling on the point.

*Cur. adv. vult.*

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The Attorney-General applies for revision of the sentences in this case. Mr. Bawa, for the persons sentenced takes the preliminary objection that the Attorney-General might have appealed against the sentences, and that this Court should follow the rule of practice, which has been sometimes suggested or adopted, that where the applicant for revision had a right of appeal, his application ought generally to be refused.

Mr. van Langenberg contends that where there has been a conviction and a lawful sentence, the Attorney-General has no right of appeal against the sentence. The right of appeal in criminal cases is defined by sections 335 to 338 of the Criminal Procedure Code. Section 335 sets out certain cases in which there is to be no appeal against a conviction, except on a matter of law; section 336 deals with appeals against acquittals, and section 337 with appeals against a refusal to issue process; and section 338 enacts that, subject to the last three preceding sections, any person

<sup>1</sup> (1908) 4 A. C. R. 79.

<sup>2</sup> (1907) 2 A. C. R. 172.

dissatisfied with " any judgment or final order " of a Magistrate or District Court in a criminal case or matter to which he is a party may appeal " against such judgment " for any error in law or in fact. When the Attorney-General, having been a party to the case, seeks to get this Court to alter the sentence, he cannot allege any error in law or in fact, and therefore I think that he cannot appeal against the sentence if it was, as this was, a lawful sentence. It is true that, by section 347, at the hearing of an appeal the Court may, on an appeal from a conviction, increase or reduce the sentence or alter the nature of it, with or without altering the verdict ; but that can only be done in a case where an appeal is allowed by section 338. I have accordingly heard the application.

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His Lordship set out the facts, and then continued :—

There can be no doubt that the conviction was right, and that the offence was very grave. Mr. van Langenberg urges that the forcible assertion of a claim to land is a common offence and is dangerous, and leads to breaches of the peace and blood feuds, and that a sentence of imprisonment without the option of a fine ought to be imposed as a warning and deterrent. The fines imposed, however, were very substantial for people of the class to which the respondents belong, and I am not sure that such fines are not as effective as a sentence of imprisonment to deter others from doing the same thing. And from every point of view a fine is more satisfactory than imprisonment. There is no reason to suppose that these men are dangerous persons, who ought to be locked up so as to protect society against them, and I never think that a Court in passing sentence should undertake the impossible task of deciding what a man " deserves ". These sentences do not appear to me to be inadequate or otherwise improper and I will make no order.

*Application refused.*

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