Present : Mr. Justice Grenier.

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THE KING *v.* TOUSSAINT *et al.*

P. C., Colombo, 9,401.

Bail—Discretion—Grounds for the exercise of discretion—Seriousness of charge—Nature of evidence—Probability of appearance.

The Supreme Court has a discretion to admit accused persons to bail in all cases, but in the exercise of that discretion, the nature of the charge, the evidence by which it is supported, and the sentence which by law may be passed in the event of a conviction, are in general the most important ingredients for the guidance of the Court, and where these are weighty the Court should not interfere.

APPLICATION for bail on behalf of the first and second accused. The accused were charged under sections 443 and 369, and 443 and 369 read with section 102, of the Penal Code.

R. L. Pereira, in support of the application.

Walter Pereira, K.C., S.-G., for the Crown.

Cur. adv. vult.

March 19, 1909. GRENIER A.J.—

These are two applications for bail made by the first and second accused respectively in case No. 9,401, P. C., Colombo, which has been committed for trial at the ensuing criminal sessions of the Supreme Court in Colombo on the 20th instant.

I shall first deal with the application of the first accused, Maurice Toussaint, which has been made on his behalf by his brother Ernest Toussaint. It is not quite correct, as stated in the application, that the first accused was arrested on a charge of complicity in the theft of money from the Harbour Works, Colombo. I understand the charge to be one of house-breaking and theft. The affidavit, however, states in the 2nd paragraph that the first accused was arrested on a charge of theft of money from the Harbour Works, Colombo, but says nothing of house-breaking. The reasons given for the application appear to be (1) that the accused is a man of unblemished character ; (2) that he is very seriously prejudiced in the defence by his being kept on remand, even after the close of the case for the prosecution ; (3) that he is unable to personally instruct counsel or even to raise money wherewith to retain counsel. I can hardly take the first ground into consideration in determining the question whether the first accused should or should not be admitted to bail. I might have regarded with some favour the second ground that the accused would be seriously prejudiced in his defence by his being kept on remand, if facts had been stated upon which I could have formed an opinion on the point. The third ground

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appears to be an unsound one, because there is nothing to prevent the first accused giving instructions to his advocate or solicitor whilst under remand. The statement that the first accused is unable to raise money wherewith to retain counsel is too bald, as there are no particulars given by him as to the measures he intends to adopt to raise money. I can understand if the first accused had stated that he had property which he intended to mortgage, and that his presence outside was necessary for the purpose; but both the application and the affidavit are silent on this point.

No doubt the main object in requiring bail is to ensure the attendance of a person charged with a criminal offence, but there are other considerations which the Court in the exercise of its discretion generally takes into account. The first accused is charged with very serious offences punishable with long terms of imprisonment. He is charged with having stolen the enormous sum of money, Rs. 25,000, from the Harbour Works Office, where he was employed as Head Clerk, and I think what was stated in the case of *Etienne Barronet v. Edmond Allain*[1] should guide me in deciding the question as to whether the first accused should or should not be admitted to bail. It was there stated that the Court has a discretion to admit accused persons to bail in all cases, but in exercising that discretion the nature of the charge, the evidence by which it is supported, and the sentence which by law may be passed in the event of a conviction are in general the most important ingredients for the guidance of the Court, and where these are weighty the Court will not interfere. In the case of *Queen v. Scaife and wife*[2] it was held that the fact of a bill having been found by the grand jury will of itself have great weight in inducing the Court to refuse an application for bail. There the charge against the prisoners was one of having certain coining moulds in their possession, and the serious nature of the offence, the amount of punishment, and the fact that a true bill had been found by the grand jury were elements which the Court took into consideration in determining the question of bail. In the present case the Attorney-General, who corresponds to the jury in England, has found a true bill against the prisoners, and I take it that the evidence is strongly presumptive of guilt. Of course, it is for the jury to say whether the evidence is trustworthy or not when the accused is on his trial.

The application was strenuously opposed by the Solicitor-General, and in my opinion upon grounds which appeared to me to be weighty. It was stated that there was an approver in the case, and that if the accused was enlarged on bail, the approver might be tampered with. In the case of *Regina v. Stephen Butler and others*[3] it was held by a majority of the Judges that the defendants should not be admitted to bail, considering, first, the serious nature of the

[1] *Ellis and Blackburn, p. 1.* [2] *Law Journal Reports, Vol. X., p. 144.*
[3] *Cox's Criminal Law Cases, Vol. XIV., p. 530.*

offence charged, secondly, the probability of the association of which the defendants were members furnishing them with funds to indemnify the bailsmen in case of default on the part of the defendants. Even if I were so disposed, I should have required the first accused to give bail in double the amount which he is said to have stolen, but in the exercise of my best discretion I would disallow the application.

For the same reasons I disallow the application of the second accused, too.

Application disallowed.