

1911.

Present: Wood Renton J.AMARIS APPU *v.* PALIS APPU.745—*P. C. Avisawella, 10,013.*

Evidence—An accused may cross-examine his co-accused if he gives evidence in his own behalf.

Where one of several accused persons comes into the witness box on his own behalf, he becomes, save as to the proviso for the limitation of cross-examination to credit, and the probability that evidence given by him may not be admissible as against his co-accused, a witness in every sense of the term.

An accused may cross-examine a co-accused who gives evidence in his own behalf.

THE facts appear sufficiently from the judgment.

van Langenberg, for the accused, appellant.

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

Cur. adv. vult.

November 22, 1911. WOOD RENTON J.—

The accused-appellant was charged in the Police Court of Avisawella with theft of two buffaloes. The Police Magistrate has convicted him, and sentenced him to six months' rigorous imprisonment. The conviction rests substantially on two grounds: in the first place, the late hour at which the buffaloes were received by the appellant; and in the next place, his failure to explain why they should have been left with him at all. He gave no evidence at the trial, but he intimated a desire to cross-examine his co-accused, Peries, who was called as a witness. The Police Magistrate refused to allow him to do so. I have had the advantage of hearing Mr. van Langenberg on behalf of the appellant and the Solicitor-General for the Crown, on the important question whether that ruling by the Police Magistrate was right, and I have come to the conclusion that it was not. The question depends on the provision of section 120 (4) of the Evidence Ordinance, that in criminal trials an accused shall be a competent witness in the same manner and with the like effect and consequences as any other witness, but that the Court may limit the cross-examination of an accused person, availing himself of the benefit of sub-section (4) of section 120 to credit, to such extent as it thinks proper. The only local decision bearing directly on the question that has to be decided on the present appeal is the case of

*King v. Thegis*¹. It was held in that case, that where an accused admitted in the witness box that he inflicted the wound, but pleaded that he did so in self-defence, being single-handed in the presence of a large party of assailants, it was permissible to ask him whether his co-accused were present at the quarrel on two grounds: in the first place, because the question was relevant to his own defence, as tending to show that at the time he was assaulted there was no one near to support or to help him; and in the next place, because, although the law provided, only in terms, that the accused was a competent witness in his own behalf, that did not mean that he was to say nothing about other persons. "His right," said Lawrie A.C.J., "to give evidence on his own behalf involves the right to give a full account of what happened, to give every detail, to mention the names of every one present, and to state what each man did." It is quite true, as the Solicitor-General pointed out, that in the case of *King v. Thegis*¹ the objection to the question put to the accused was taken by the counsel for the prosecution. But it seems to me that that case directly recognizes the principle that, where one of several accused persons comes into the witness box on his own behalf, he becomes, save as to the proviso for the limitation of cross-examination to credit, and the probability that evidence given by him may not be admissible as against his co-accused (see section 30 of the Evidence Ordinance), a witness in every sense of the term. This principle has been acted upon by the English Courts under the analogous provision of section 1 of the Criminal Evidence Act, 1898. In that section the material language used by the Legislature is as follows: "Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person." In the case of *King v. Hadwen*,² it was held by the then Court for Crown Cases Reserved that the effect of this section is to make an accused person, if he gives evidence, an ordinary witness in the case, and therefore liable to be cross-examined on behalf of the person jointly indicted with him. Section 120 (4) of the Evidence Ordinance uses the words "a competent witness in his own behalf," instead of the words in the English statute "a competent witness for the defence"; and in the case of *James Macdonnell (or MacDonald)*,³ it seems to have been suggested in argument—and the point is noted by Mr. Justice Darling in delivering the judgment of the Court—that those two expressions would not be identical in meaning, and that if the words "in his own behalf" were used, they might be interpreted as restricting the right of an accused person to give evidence to matters affecting himself alone. In the case, however, of *King v. Thegis*¹ which is binding upon me, and with the reasoning of which I respectfully agree, the words "in his own

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¹ (1901) 5 N. L. R. 107.² (1902) 86 Law Times 601.³ (1909) 2 Cr. App. R. 322.

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behalf " are treated in effect as meaning " for the defence," and emphasis is expressly put on the subsequent provision, which I have already quoted, placing an accused person who comes forward as a witness in the same position as any ordinary witness who may be called in the case. There can be no doubt but that it is in the interests of justice that the section should be interpreted in the sense which I am now putting upon it. I will quote in this connection the language used by Mr. Justice Darling himself in the case above referred to: " Any other interpretation of the Act would lead to endless confusion and injustice. For instance, a prisoner-witness in giving evidence on his own behalf may necessarily have to give evidence on behalf of a co-prisoner. Can it be said that such evidence must be ruled out?"

On the grounds that I have stated I set aside the conviction and the sentence in this case, and send it back for further inquiry and adjudication in the Police Court of Avisawella. The appellant will have the right, so far at least as the provisions of section 120 (4) of the Evidence Ordinance are concerned, to call and examine his former co-accused as a witness on his own behalf, and to give such explanation as he is able, either by calling himself as a witness, or by calling other witnesses, of the points on which the Police Magistrate relies in his original judgment.

Set aside and sent back for further inquiry.

