

[IN REVISION.]

1913.

Present: Wood Renton J.

MODDER *v.* PERERA.

P. C. Colombo, 37,357.

An act which is an offence under two or more laws—Conviction under one law—Application to Supreme Court to quash conviction so that proceedings may be taken under the other law.

Where any act or omission constitutes an offence under two or more laws, the offender shall be liable to be prosecuted and punished under either or any of those laws, but shall not be liable to be punished twice for the same offence.

THE facts appear from the judgment.

De Saram, C.C., for the Attorney-General.—The offence is one punishable under section 62 of the Post Office Ordinance of 1908 with seven years' imprisonment. The Magistrate should not have, under the circumstances, tried the case summarily under section 370

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of the Penal Code. The application of the Attorney-General is to get the proceedings quashed so that non-summary proceedings may be taken against the accused.

There is nothing, however, to prevent the Attorney-General to take non-summary proceedings against the accused even if this conviction remains. The plea of *autrefois convict* would not be open to the accused. Criminal Procedure Code, section 330 (4).

A. St. V. Jayewardene, for the accused.—Section 8 of Ordinance No. 21 of 1901 is a bar to any further prosecution of the accused on the same facts. The conviction under the Penal Code is quite regular.

March 14, 1913. WOOD RENTON J.—

This is an application on behalf of the Attorney-General in revision. The accused, a Post Office peon, was charged in the Police Court of Colombo under section 370 of the Penal Code with having, while employed in the capacity of a servant in the General Post Office, committed theft of a postal parcel. The Police Magistrate convicted him and sentenced him to one month's rigorous imprisonment, which he has undergone. The object of the present motion in revision is to have these proceedings quashed and the case sent back for non-summary proceedings under section 62 of the Ceylon Post Office Ordinance, 1908 (No. 11 of 1908), which penalizes theft or dishonest misappropriation by officers of the Post Office of postal articles in the course of transmission. The maximum penalty for offences under that section is seven years' rigorous imprisonment, with or without a fine. Section 89 of the same Ordinance gives the Police Court jurisdiction to try offences under the Ordinance, which it would otherwise be incompetent to deal with on a certificate of the Attorney-General. No such certificate was issued in the present case. Mr. de Saram, C.C., who appears in support of the motion for revision, has called my attention to section 330 (4) of the Criminal Procedure Code, which, he argues, would prevent the accused, if the Attorney-General indicted him under the provisions of section 62 of Ordinance No. 11 of 1908, from meeting the charge by a plea of *autrefois convict*. Section 8, however, of the Interpretation Ordinance, 1901 (No. 21 of 1901), provides that, where any act or omission constitutes an offence under two or more laws, the offender shall be liable to be prosecuted and punished under either or any of those laws, but shall not be liable to be punished twice for the same offence. The offence of which the accused has already been convicted is in itself substantially identical with that which would form the subject of a charge under section 62 of Ordinance No. 11 of 1908. I think, therefore, that the present application should be dismissed.

Application refused.