1956 *Present :* **Sinnetamby, J.**

GUNARATNE, Appellant, *and* DEVARAJAN (Government Agent, Puttalam), Respondent

S. C. 462—M. C. Puttalam, 4,699

Criminal procedure—Plaint brought in name of wrong person—Amendment—Effect— Autrefois acquit.—*Criminal Procedure Code, ss. 147 (1) (a), 148(1) (b), 195, 336.*

Where a plaint was filed by the wrong public officer and was subsequently amended so as to substitute the name of the proper officer as complainant—

***Held*, that the amendment of a plaint on the ground that it was brought in the name of the wrong person as complainant does not amount to a withdrawal of the case and acquittal of the accused within the meaning of section 195 of the Criminal Procedure Code.**

[1] *(1935) 37 N. L. R. 165.*
[2] *(1951) 53 N. L. R. 97.*

APPEAL from a judgment of the Magistrate's Court, Puttalam.

C. S. Barr Kumarakulasinghe, for the accused-appellant.

T. A. de S. Wijesundera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 15, 1956. SINNETAMBY, J.—

The accused in this case was charged with Criminal Intimidation under section 486 of the Penal Code and with voluntarily obstructing a public servant, to wit, the Colonisation Officer, under section 183 of the Penal Code. The latter charge required either the sanction of the Attorney-General or that the plaint should have been instituted by the public officer concerned or by someone to whom he is subordinate. The original plaint was filed on 21/11/55 the written report to Court being made by the Divisional Revenue Officer. The accused appeared in Court on the same day and was charged. He pleaded "not guilty" and the trial was fixed for 12/12/55. On 12/12/55 at the request of the Police a date was given for an amended plaint which was filed, however, on the same day. The written report on this occasion was made by the Office Assistant to the Government Agent. The case was due to be called on 19/12/55 but on the 15th November yet another amended plaint was filed by the Government Agent. On 19/12/55 the accused was charged on the written report made to Court by the Government Agent. After trial he was convicted and sentenced to four weeks' rigorous imprisonment on the first count and six weeks' rigorous imprisonment on the second count. The appeal is against this conviction and sentence.

The only question argued was that the various steps taken in the case of "amending" the plaint filed under section 148 (1) (*b*) amounted to withdrawals of the case under section 195 of the Criminal Procedure Code and that the magistrate should have entered an order of acquittal instead of proceeding to charge the accused as he did finally on 19/12/55 on the fresh plaint filed by the Government Agent. The offence of which the accused was convicted was one which under the provisions of section 147 of the Criminal Procedure Code could not be instituted "without the previous sanction of the Attorney-General or on the complaint of the public servant concerned or of some public servant to whom he is subordinate."

This requirement of the law accounted for the various steps adopted by the prosecution in seeking to amend the plaints filed. Presumably they were unable to decide whether the Colonisation Officer who was the public officer concerned was subordinate to the Divisional Revenue Officer, the Office Assistant or to the Government Agent within the meaning of section 147 (1) (*a*). The sanction of the Attorney-General had not been obtained.

It was contended for the appellant that the learned magistrate could not have accepted amended plaints without first permitting the plaints already filed to be withdrawn under section 195 of the Criminal Procedure Code. Although no formal order was made it was contended that the magistrate should have acquitted the accused on each of the earlier plaints and that although in fact he had not done so the accused was entitled on the basis of an acquittal to plead "autrefois acquit" under section 330 of the Criminal Procedure Code.

The question that arises for decision is whether the amendment of a plaint amounts in law to a withdrawal of the charge contained in the plaint sought to be amended within the meaning of section 195. In *Don Abraham v. Christoffelsz* [1] cited with approval in *Edwin Singho v. Nanayakkara* [2] the Supreme Court held that when on a date of trial the prosecution offered no evidence in support of the charge as the chief witness for the prosecution was absent an order of "discharge" amounted to an acquittal. It was held that such an order precluded the prosecution from filing a fresh plaint.

In a sense the filing of an amended plaint may be said to amount to a withdrawal of the original plaint but what the Court has to consider is whether it is a withdrawal within the meaning of section 195. Hearne, J., in discussing this aspect of the matter in *The King v. K. William* [3] made the following observations :—

> "Again, under section 195, notwithstanding the fact that no trial takes place, the accused is in law deemed to have been tried and acquitted within the meaning and for the purpose of section 330. An attempt, however, is made to preserve the idea of an acquittal on the merits by the use of the words "if the complainant . . . . satisfies the magistrate . . . . ."
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> An order of acquittal under section 195 which follows the withdrawal of the complaint implies that the magistrate has addressed himself to the merits of the case and has satisfied himself that the complainant should be permitted to withdraw for the reason that the accused cannot be proved to be guilty."

Hearne, J., had earlier in the case of *Dias v. Iyasamy* [4] held that a withdrawal of a case, having regard to the facts established in that case, did not amount to an acquittal. In that case the plaint was withdrawn because of some defect in the charge. The accused was discharged and a fresh plaint filed in respect of the same charge and the learned judge held that the order of discharge did not amount to an acquittal within the meaning of section 195 of the Criminal Procedure Code. Dealing with the matter the learned Appeal Judge states :

> "The construction that has been placed on the section which, in other Codes, corresponds to section 195 has been largely influenced by the word "satisfies". A complainant who initiates a prosecution is ordinarily expected (I am not now dealing with the compounding

[1] *(1953) 55 N. L. R. 92.*
[2] *(1956) 53 C. L. W. 95.*
[3] *(1942) 44 N. L. R. 73.*
[4] *(1940) 42 N. L. R. 260.*

of offences) to continue with it till the accused has been convicted or acquitted. If he withdraws the accused is entitled to an acquittal and not an inconclusive discharge. But before he is permitted to withdraw he must satisfy the magistrate that there are sufficient grounds for permitting him to withdraw finally from the prosecution of the accused. I stress the word finally. By it I mean once and for all time on the facts alleged. For an order of acquittal which follows the withdrawal of the complainant implies that, although there has been no trial, the magistrate has addressed his mind to the merits of the case and has satisfied himself that the complainant should be permitted to withdraw."

With these views I most respectfully agree. The amendment of the plaint due to the fact that it was brought in the name of the wrong person as complainant does not in my view amount to a withdrawal of the case within the meaning of section 195 of the Criminal Procedure Code. The accused was accordingly properly convicted and sentenced and the plea of "autrefois acquit" fails. The appeal is accordingly dismissed.

Appeal dismissed.