

1970 Present : Tennekoon, J., and Wijayatilake, J.

S. P. JAYAWARDENA, Appellant, and THE QUEEN, Respondent

*S.C. 8/1969 (Special)—D. C. Matara, 2640/L*

*Oaths Ordinance (Cap. 16)—Section 11 (1)—Witness—Summary punishment for giving false evidence in open court—Procedure—Penal Code, s. 188.*

A witness should not be punished by a District Judge under section 11 (1) of the Oaths Ordinance for giving false evidence in open court unless he is first given an opportunity of showing cause. Furthermore, action should not be taken under that section until the conclusion of the case.

**A**PPEAL from an order of the District Court, Matara.

*S. Sahabandu*, for the witness-appellant.

No appearance for the plaintiff-respondent.

May 15, 1970. TENNEKOON, J.—

The appellant in this case is a person who gave evidence in the course of a civil trial in the District Court of Matara; he was called by the defendant in the case and while in the box was questioned at some length by the District Judge himself. When he concluded his evidence the learned District Judge, purporting to act under Section 11(1) of the Oaths Ordinance (Cap. 17), sentenced the witness to a fine of Rs. 50/- in default 2 months' rigorous imprisonment, on the ground that in his opinion the witness had given false evidence within the meaning of Section 188 of the Penal Code.

The witness was not given an opportunity of showing cause against an order being made against him under Section 11 of the Oaths Ordinance. In the case *In re de Silva*<sup>1</sup> this Court held that a District Judge or a Magistrate should not punish a witness for giving false evidence under

<sup>1</sup> (1949) 50 N. L. R. 517.

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Section 11 (1) of the Oaths Ordinance without first giving the witness an opportunity of showing cause ; the Court further said that action should not be taken under that section until the conclusion of the case.

We think that in this case the learned District Judge has not observed the procedure that has been judicially laid down for Judges when acting under Section 11 of the Oaths Ordinance. We therefore, quash the conviction and the sentence. The appeal is allowed.

WIJAYATILAKE, J.—I agree.

*Appeal allowed.*

