1936 *Present :* **Akbar S.P.J.**

GOONERATNE *v.* MAHADEVA.

83—P. C. Colombo, 38,414.

Criminal Procedure—Power of Police Magistrate to try accused summarily as District Judge—Appointment of Magistrate—Notification by Attorney-General—Presumption regarding official acts—Evidence Ordinance, s. 114—Criminal Procedure Code, s. 152 (3).

A Police Magistrate, who is also District Judge, has power to try summarily under section 152 (3) of the Criminal Procedure Code an accused person against whom he has taken non-summary proceedings in respect of the same offence.

Where a notification appeared in the *Government Gazette* signed by the Attorney-General to the effect that H. E. the Governor had appointed a certain person to act as Police Magistrate during a stated period,—

Held, that a Court would presume that the appointment was regularly made.

APPEAL from a conviction by the Police Magistrate of Colombo.

H. V. Perera (with him *N. E. Weerasooria, N. Nadarajah,* and *de Jong*), for accused, appellant.

J. E. M. Obeyesekere, Deputy S.-G. (with him *H. W. R. Weerasooriya C.C.*), for Crown, respondent.

July, 1936. AKBAR S.P.J.—

Mr. H. V. Perera who appears for the accused-appellant has taken two objections to the conviction and sentence passed on the accused in this case, both on the law.

The first objection was a serious one as it went to the question of jurisdiction of the Magistrate to try the case at all. It appears that non-summary proceedings were taken against the accused who is a proctor, the charge being one of criminal breach of trust of a sum of Rs. 750 entrusted to him by a corporation in his capacity as agent of that corporation. After some evidence had been led, the learned Additional Police Magistrate on January 22, 1936 (because he was a District Judge having jurisdiction to try the offence), although the offence was not otherwise summarily triable by a Police Court, took

summary proceedings, stating as his reason that it was expedient to do so, and purporting to act under section 152 (3) of the Criminal Procedure Code. The learned Magistrate framed a charge against the accused to which he pleaded "guilty". His counsel, Mr. R. L. Pereira K.C., moved for leniency in view of the fact that the accused would anyhow forfeit his professional career and that the money was paid back at the end. The learned Judge refused to treat the accused as a first offender under section 325 of the Criminal Procedure Code and sentenced him to a term of six months' rigorous imprisonment.

Mr. Perera argues in the first place that the Magistrate had no jurisdiction on January 22, 1936, to act as Police Magistrate, Colombo, with powers also to act as District Judge. He took the objection on the ground that Mr. J. N. Arumugam had been appointed Police Magistrate, Colombo, to officiate from January 18, 1936, and that Mr. Manders as Additional Police Magistrate had no power to act as Magistrate. Reference was made to the Courts Ordinance, sections 55, 56, and 57. I did not at that time think that there was much substance in this argument because whether he was Magistrate or Additional Magistrate, he had concurrent jurisdiction with Mr. Arumugam.

Mr. Perera then took another objection, namely, that Mr. Manders had not been appointed by the Governor as required by section 56 of the Courts Ordinance, to act as Magistrate on January 22, 1936. If Mr. Manders had not been appointed Magistrate on January 22, 1936, as the learned Deputy Solicitor-General admitted that he (Mr. Manders) had ceased to act as Magistrate on January 18, 1936, then obviously Mr. Manders had no jurisdiction to try this case. But a *Gazette* Notification has been produced by the learned Deputy Solicitor-General, published in the *Government Gazette* of January 31, 1936, which contains a notification dated January 27, 1936, and signed by the Acting Attorney-General announcing the fact that His Excellency the Governor has been pleased to make certain appointments. There are 13 appointments so announced, one of them being to this effect :

> "Mr. R. H. D. Manders to be an Additional Police Magistrate, an Additional District Judge, and an Additional Municipal Magistrate, Colombo, from January 18 to 22, 1936."

Mr. Perera, however, argues that this notification which purports to have been issued by the Acting Attorney-General on January 27, 1936, appointing Mr. R. H. D. Manders was made after he had begun to officiate from the 18th and had ended officiating on January 22, 1936. In other words, he is entitled, he says, to ask that a Court should presume that the appointment was made in retrospect. It will be seen, however, from the Evidence Ordinance, No. 14 of 1895, section 114—illustration (*e*)—that the Court may presume that judicial and official acts *have been regularly performed.* Further, under section 81, the Court shall presume the genuiness of the local *Government Gazette.* Section 57 states that the Court shall take judicial notice of the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of the Colony, if the fact of such appointment to such office is notified in the *Government Gazette.*

I must therefore presume the genuineness of the *Gavernment Gazette* and the fact that the proclamation was made by the Acting Attorney-General on January 27, 1936, announcing to the world that Mr. R. H. D. Manders had been regularly appointed, according to law, with power to act between the dates specified in the Notification.

What Mr. Perera wants me to do is to presume the opposite from the fact that the *Gazette* is dated January 31, 1936, and the Acting Attorney-General's letter is dated January 27, 1936. I do not see why, in view of *illustration (e)* of section 114 of the Evidence Ordinance, I may not presume that the appointment was made in time so as to authorize Mr. Manders to act as Police Magistrate during the period mentioned in the Notification.

Another point was taken incidentally and that was the fact that the Courts Ordinance refers to appointments being made by the Governor whereas this Notification is signed by the Acting Attorney-General. I cannot, in view of the presumtion created by section 114 (illustration (*e*)) see any reason to doubt what the Notification purports to state, namely, that the appointment was made by the Governor. Even if it were otherwise, that is to say, even if the appointment was made by the Attorney-General and not by the Governor, the Interpretation Ordinance—section 9 (3) of Ordinance No. 21 of 1901—in my opinion, covers the case. That sub-section states that in all Ordinances for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in place of such chief or superior, it shall be deemed to have been and to be sufficient to prescribe the duty of such chief superior. The Notification states that the Acting Attorney-General was acting under His Excellency's command. The presumption, therefore, is that the Acting Attorney-General had been duly authorized by His Excellency to perform the duty that he purported to exercise in appointing Mr. R. H. D. Manders to act as the Additional Police Magistrate of Colombo. In other words, there is nothing before me to show that the Acting Attorney-General was not lawfully executing the duties authorized by His Excellency.

I might mention, however, that the learned Deputy Solicitor-General called my attention to articles 92, 93, and 94 of the Ceylon State Council Order in Council. Under section 94, the Governor may, by order published in the *Government Gazette,* delegate to any Officer of State or to any Executive Committee or to the Head of any Government Department, subject to such conditions or limitations, as he may prescribe, the exercise of any power, authority or function to which articles 92 and 93 refer.

This is one method by which the Governor can act. The alternative method is the one adopted in this case, by which he can authorize the Attorney-General to appoint a Police Magistrate or District Judge on his behalf.

The *Gazette* of January 31, 1936, enables me to come to the conclusion that the appointment has been made in the regular course by an officer who has been authorized to act by His Excellency the Governor in the way the law allows him. For these reasons, the main objection taken

by Mr. Perera fails, namely, that the Magistrate had no jurisdiction to try this case on January 22, 1936.

Then Mr. Perera took another objection that the learned Magistrate's mind had been prejudiced because he started these proceedings as a non-summary case and that his mind must have been therefore prejudiced in the awarding of punishment on the accused. The accused pleaded "guilty" to the charge; it was a most serious charge under section 392 of the Penal Code, which, in the ordinary course, might have been committed to the Supreme Court and the maximum penalty provided by section 392 is rigorous imprisonment for a period of ten years. I cannot see how it can be urged that the Magistrate who only passed a sentence of six months' rigorous imprisonment instead of the two years he could have passed must have been prejudiced by the facts of the case, which became apparent to him when he recorded the evidence of some of the witnesses. What happened in this case is obvious enough: many an accused plead guilty in the hope that they will not get what they consider is a severe term of sentence, and when it turns out opposite to their expectations, then points of law similar to the ones raised here are taken in the Court of Appeal. Even if these points succeed the case will have to be sent back and the accused then stands the risk of standing his trial in a higher Court and of being sentenced to undergo a much more severe sentence.

Both objections fail, and the appeal and the application in revision are dismissed.

Affirmed.