

1909.
October 28.
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Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

THE KING *v.* ABEYESEKERE.

D. C. (Crim.), Galle, 13,617.

False evidence — Summary punishment — Delay — Criminal Procedure Code, s. 440.

Where the accused was charged on October 1, under section 440 of the Criminal Procedure Code, in respect of evidence given by him on April 26 and was convicted,—

Held, that the conviction was wrong, inasmuch as the District Judge had no power, after such a long interval, to put in force the summary provisions of section 440 of the Criminal Procedure Code.

A PPEAL by the accused from a conviction under section 440 of the Criminal Procedure Code for giving false evidence.

A. St. V. Jayewardene, for the accused, appellant.

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

Cur. adv. vult.

October 28, 1909. HUTCHINSON C.J.—

This is an appeal against a fine imposed on the appellant under section 440 of the Criminal Procedure Code for giving false evidence. The appellant contends that it does not appear from the record that his evidence was in any way false; that he was asked a question about one Agoris, without being told which Agoris was meant; that there were two men of that name concerned in the case, one

being a witness, and the other being a man who was bail for one of the accused ; and that he thought at the moment that the latter was the man who was meant, and that he found out his mistake immediately afterwards and informed the Judge of it and corrected it. I see no reason to doubt that the Judge was right as to that.

The other objection is this. The evidence was given on April 26, 1909, and the appellant was not brought before the Court and charged and punished until October 1 ; and the objection is that the Court had no power to deal with the alleged offence under section 440 after so long a lapse of time. The enactment is that " if any person giving evidence on any subject in open Court in any judicial proceeding under this Code gives, in the opinion of the Court before which the judicial proceeding is held, false evidence, it shall be lawful for the Court, if such Court be the Supreme Court, summarily to sentence such witness as for a contempt of the Court to imprisonment, or, if such Court be an inferior Court, to order such witness to pay a fine," &c. Grammatically it may not be clear that the word " summarily " applies to both Courts ; but I do not think that any one can doubt that the Legislature intended it so to apply—intended to give power to all Courts to deal with such offences " summarily," by imprisonment or fine in the case of the Supreme Court, and by fine only in the case of other Courts. And the word " summarily," according to the context, either may mean as a " summary offence " (as defined in section 3), or may have its ordinary non-technical sense, which, as given in the Imperial Dictionary, is " briefly, concisely, in a short way or method, without delay." The latter is obviously the sense in which it is used in section 440. If the Court deals with an offence under section 440 within a day or two after the offence is committed, or perhaps before the close of the Sessions, it might be deemed to have done so " summarily " ; but I think an interval of over five months is too long. The learned Judge explains the delay ; he had reported the matter to the Government Agent immediately after the evidence was given in order that the offender, who is a Police Officer, might be dealt with by the Government Agent, but when he found that the man was not going to be punished, he determined to punish him under section 440. But in my opinion he had no longer power to do so, and I must set the conviction aside.

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C.J.

Appeal allowed.