

Present: Wood Renton C.J.

1915.

SUB-INSPECTOR OF POLICE *v.* JAMES SINNO.

576-586—*P. C. Balapitiya, 40,908.*

*Martial law—Order promulgated by Officer Commanding the Troops—
Punishment under the Penal Code, s. 185.*

In consequence of disturbances, martial law was proclaimed over several Provinces of Ceylon, and the General Officer Commanding the Troops was placed in charge of the maintenance of order, and was authorized to take all steps, of whatever nature that he might deem necessary, for those purposes. The General Officer Commanding the Troops by an order provided that no persons except soldiers, &c., should be permitted to be in public streets and roads between 7 P.M. and 5 A.M. without special passes.

Held, that a breach of this order was punishable under section 185 of the Penal Code.

There is nothing in clause 111 of the Order in Council of October 26, 1896, which requires an offence created by martial law to be tried by court martial only.

THE facts are set out in the judgment.

A. St. V. Jayawardene, for the appellants.

Bawa, K.C., S.-G., for the respondent.

June 22, 1915. WOOD RENTON C.J.—

This is one of a group of appeals from the Police Court of Balapitiya which raise practically the same point of law. As far as possible I will deal with that point in the present case, and merely refer to this judgment in disposing of the other appeals. The appellants

¹ (1890) *Wheeler's P. C. Law* 686.

² (1899) *Ch.* 364.

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are charged with having on June 9, 1915, disobeyed "an order lawfully promulgated by the General Officer Commanding the Troops in Ceylon, by being found on the road between 7 P.M. and 5 A.M., the Province being under martial law," an offence alleged to be punishable under section 185 of the Penal Code. The appellants severally pleaded guilty, and the learned Police Magistrate sentenced each of them to one month's simple imprisonment, and to a fine of Rs. 25, or, in default of payment, to one week's simple imprisonment. In view of the pleas of guilty there would ordinarily be no right of appeal. But counsel for the appellants has taken a point of law in their favour, and I shall, therefore, deal with the case on the basis that an appeal is competent. Even if the fact had been otherwise, I should not have hesitated to treat the appeals as if they had been applications in revision. The material facts are that on August 5 last year, on the outbreak of war between Great Britain and Germany, a Proclamation was issued by His Excellency the Governor bringing into operation an Imperial Order in Council dated October 26, 1896. The effect of that Order in Council was to make all persons for the time being within the limits of the Colony subject to military law, as if they had been persons actually accompanying His Majesty's troops. In consequence of recent disturbances in this Colony, martial law was proclaimed on the 3rd instant, and the General Officer Commanding the Troops was placed in charge of the maintenance of order and the defence of life in the Provinces to which the Proclamation applied, and which included Balapitiya, and was authorized to take all steps of whatever nature that he might deem necessary for those purposes. The General Officer Commanding the Troops, by an order dated the 9th instant, provided that no persons except officers, soldiers, police, postmen and telegraph messengers in uniform, and special constables, should be permitted to be in the public streets or roads between the hours of 7 P.M. and 5 A.M. without special passes. This was not the first order dealing with the subject, for I find that on the 3rd instant a similar order was issued, in which, however, the prohibited period was between 6 P.M. and 6 A.M. Section 185 of the Penal Code makes punishable with fine and imprisonment disobedience to an order promulgated by a public servant, lawfully empowered in that behalf, to abstain from doing certain acts. The charge against the appellants is that, after the order with which we are here concerned came into operation, they were found on the road between 7 P.M. and 5 A.M., the whole Southern Province being subject at the time to martial law. Now, if there were nothing more in the case, it is clear that this conduct would fall within the mischief struck at by section 185 of the Penal Code. The order had been promulgated at the time when the act complained of was committed; the General Officer Commanding the Troops was lawfully authorized at the time to make it, and the appellants disobeyed it. But their

counsel relied on a proviso to clause 111 of the Order in Council of October 26, 1896. That clause is in these terms: " Provided that a person who is by virtue of this Order subject to martial law shall, unless the Governor directs otherwise, be tried by a competent civil court, and not by a court martial, for any offence with which he would be triable if he were not subject to martial law." The argument put before me was, that wherever an offence is created by martial law it is by virtue of this proviso triable by court martial alone. I am unable to construe the proviso in that sense. Its meaning seems to me to be this. Where the condition which it contemplates has been brought into operation, a person subject to the application of the Order in Council, who is alleged to have committed an offence under martial law, shall be tried by a competent civil court, unless the Governor gives direction to the contrary. But it does not follow—the proviso certainly does not say—that where an offence amounting to a breach of military law is also an offence under the Penal Code, he must be tried by court martial alone. It would certainly in many cases not be in the interest of the subject that the proviso should be construed in this sense. For, as we are all aware, the procedure before courts martial is far more summary than that which the Municipal law recognizes; and it may be added that the sentences for which martial law provides are frequently more severe than those embodied in the Penal Code. For the reasons that I have stated, these appeals—for I have treated them as such, in view of the point of law that has been urged—must be dismissed. It is impossible for me to interfere with the sentences in cases of this kind. The appellants have pleaded guilty, and there has consequently been no investigation of the facts.

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Affirmed.