

1916.

[FULL BENCH.]

*Present:* Wood Renton C.J. and Ennis and De Sampayo JJ.

SHOCKMAN v. BALAYA.

954—P. C. Gampola, 10,075.

*Sentence of imprisonment in default of payment of fine—May fine be levied after accused had undergone imprisonment?—Criminal Procedure Code, s. 312.*

Where a person was sentenced to pay a fine, and in default to undergo rigorous imprisonment for a term, and where he underwent the prescribed term of imprisonment, it is not competent to issue a warrant for the levy of the amount of the fine.

The levying of the fine and the carrying out of the sentence of imprisonment are alternatives.

**T**HE facts appear from the judgment.

*Bartholomeusz* (with him *Naganathan*), for accused, appellant.

*Garvin, S.-G.*, for the Crown.

October 24, 1916. WOOD RENTON C.J.—

This case raises an important question under section 312 of the Criminal Procedure Code. The appellant was convicted in the Police Court of Gampola of having been in the illegal possession of an excisable article, and was sentenced to pay a fine of Rs. 250, and in default to undergo rigorous imprisonment for a period of six weeks. He did not pay the fine, and duly underwent the prescribed term of imprisonment. On his discharge from jail he found that in the meantime a warrant had issued for the levy of the amount of the fine, and that certain movable property belonging to him had been seized in execution of the warrant. The appellant forthwith applied to the Police Magistrate for the release of his property from seizure. The Police Magistrate declined to interfere, holding that the appellant's remedy was to pay the amount of the fine himself. The present appeal is brought from that order. Sub-sections (1) and (2) of section 312 correspond with section 386 of the Indian Code of Criminal Procedure, and the interpretation of the latter section, which has been adopted in India (see *Gour's Indian Penal Code, vol. 1., 183, 184*) is to the effect that a period of imprisonment undergone in default of payment of a fine, while it purges the default, is no satisfaction of the fine, which may still be recovered by levy.

If the present case had to be disposed of on sub-sections (1) and (2) of section 312 of the Code of Criminal Procedure, or the analogous provisions of section 60 of the Penal Code, we should have found, I think, that it was necessary to define the practice in the same sense. Clauses (f), (g), and (h) of sub-section (1) of section 312 distinctly point to the conclusion that the fine may be levied although the offender has been imprisoned. But in sub-section (3) of section 312 we have an enactment which is not to be found either in our own Penal Code or in the Indian Code of Criminal Procedure. It is in these terms: "In exercising the discretion given in the last preceding sub-section the Court shall have regard to the welfare of the offender and of his family, and shall not issue such warrant if in its opinion the levy of the distress would be more injurious to the offender or his family than imprisonment." It appears to me that this sub-section is in direct conflict with the policy of sub-sections (1) and (2). It seems to indicate that the Court is to regard the levying of the fine or the carrying out of the sentence of imprisonment as alternatives. I do not see how effect can be given to the language of the sub-section in any other way. Section 313 of the Criminal Procedure Code, which enables the Court to suspend the execution of the sentence of imprisonment when it issues a warrant for the levying of a fine under section 312, no doubt tells against this construction.

But we are dealing here with a highly penal enactment, in which the language of the Legislature itself has given rise to grave ambiguity, and, in accordance with the ordinary rule for the interpretation of such enactments (see Maxwell's *Interpretation of Statutes*, 4th ed., 394; Craies on *Statute Law* 425) the appellant is entitled to the benefit of the doubt. The Legislature can, if it chooses, make its own meaning clear for the future. I would allow the appeal, and direct the release from seizure of the appellant's property.

ENNIS J.—I agree.

DE SAMPAYO J.—I agree.

*Appeal allowed.*

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WOOD  
RENTON C.J.

*Schockman  
v. Balaya*