

1913.

[FULL BENCH.]

Present : Pereira, Ennis, and De Sampayo JJ.*In re* WIJESINGHE.

Appeal—Conviction for contempt of Court by Judge of Supreme Court—Right of appeal to a Full Bench—Courts Ordinance, s. 51—Civil Procedure Code, s. 798.

A person committed to jail, or sentenced to pay a fine, on conviction for contempt, by one or more Judges of the Supreme Court in the exercise of powers vested in the Court by section 51 of the Courts Ordinance, has no right of appeal. Section 798 of the Civil Procedure Code does not apply to orders made and sentences passed by one or more Judges of the Supreme Court.

IN this case one Wijesinghe was charged for contempt of Court, in that he attempted to influence certain jurors who formed the panel of jurors summoned for the Criminal Sessions of the Supreme Court holden at Matara, and was convicted by the presiding Judge (Wood Renton A.C.J.) and sentenced to one year's simple imprisonment. The accused appealed.

Garvin, Acting S.-G., for the Crown.—There is no appeal against a conviction by a Judge of the Supreme Court for a contempt of Court. There is an appeal from a decision of a Judge of the Supreme Court to two Judges of the Supreme Court only in the special case provided for in section 40 of the Courts Ordinance.

Elliott (with him *J. W. de Silva*), for the appellant.—Under section 798 an appeal lies to the Supreme Court from "every conviction made by any Court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of Court."

The appeal lies from a conviction of "any Court"; the words are wide enough to include an appeal from a conviction by a Judge of the Supreme Court for contempt of Court.

Under section 39 of the Courts Ordinance an appeal lies from a decision of one Judge of the Supreme Court to two Judges.

June 4, 1913. PEREIRA J.—

In my opinion this appeal cannot be entertained. It is a well-established principle of law that an appeal never lies to a party to a legal proceeding from an order made in it unless the right is expressly given by statute (see *Rex v. The Justices of Cashibiry*¹

¹ 3 D. & R. 85.

and *Attorney-General v. Silem* ¹); and so far as I can see, there is no right of appeal given anywhere from an order made by this Court under the powers conferred on it by section 51 of the Courts Ordinance. The appellant's counsel has cited section 798 of the Civil Procedure Code in support of his contention, but that section cannot be said to give a right of appeal from an order made by the Supreme Court in a case of contempt of Court. This Court may, or perhaps must, in such a case adopt the procedure laid down in chapter LXV. of the Civil Procedure Code, of which section 798 is one of the sections, but the provision of that section as to appeals refers only to appeals from orders made by the inferior Courts. The fact that the section provides that an appeal shall lie to the Supreme Court is, in the absence of explanatory words, indicative of an intention on the part of the Legislature to exclude the idea of an appeal from an order of that very Court, because, otherwise, we should be confronted with the anomaly of an appeal from an order of the four Judges of this Court sitting collectively to the same four Judges. It appears to me that there is a great deal in the "subject or context" (to use the words of the interpretation clause of the Civil Procedure Code) repugnant to the construction sought to be placed by the appellant's counsel on the expression "any Court" in section 798. If it is assumed that an appeal lies under that section from an order of the Supreme Court in a case of contempt of Court the question would naturally arise whether there is any special provision as to the constitution of the Court for dealing with such an appeal. Manifestly section 41 of the Courts Ordinance cannot apply to such an appeal. That being so, the appeal would have to be dealt with by the Supreme Court as defined by section 8 of the Courts Ordinance, that is to say, by the Court "consisting of and holden by or before four Judges." So that where under section 51 of the Courts Ordinance, the Court constituted in accordance with section 8 tries a charge of contempt of Court, the anomaly that I have already pointed out of an appeal from an order of four Judges to the same four Judges, will be the result. It is clear, therefore, that the construction contended for by the appellant's counsel cannot be placed on section 798 of the Civil Procedure Code. Moreover, the section refers to appeals from an order of a Court in the exercise of its "special jurisdiction to take cognizance of and punish by way of summary procedure the offence of contempt of Court." The reference here clearly is to the "special jurisdiction" conferred on District Courts, Courts of Requests, and Police Courts by section 59 of the Courts Ordinance, which provides that such Courts "shall for the purpose of maintaining their proper authority and efficiency have a special jurisdiction to have cognizance of and to punish every offence of contempt of Court committed in the presence of the Court itself," &c.

1913.

PERRIRA J.

In re
Wijesinghe

1913.

PEREIRA J.

In re
Wijesinghe

Reference has also been made to section 39 of the Courts Ordinance, but that section does not contain the provisions of the law conferring an appellate jurisdiction on the Supreme Court. It rather makes provision touching the exercise of such jurisdiction conferred elsewhere. It provides for the place at which, and the extent to which, such jurisdiction may be exercised; that is to say, it provides that such jurisdiction shall be ordinarily exercised in Colombo, and it shall extend to the correction of all errors in fact or in law committed by any Judge from whose orders an appeal is given to the Supreme Court. The right of appeal itself is given from an order of one Judge of the Supreme Court, in certain circumstances, to two other Judges by sections 40 and 41 of the Courts Ordinance, from orders of District Courts to the Supreme Court by section 75, from orders of Courts of Requests by section 80 of the Courts Ordinance, and from orders of Police Courts and (in criminal matters) of District Courts by section 338 of the Criminal Procedure Code, but nowhere is an appeal allowed from an order of one or more Judges of the Supreme Court made in exercise of the power or authority conferred on the Court by section 51 of the Courts Ordinance to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself, or of any other Court which (in the latter case) such Court has not the power under the special jurisdiction conferred on it by section 59 to take cognizance of.

For the reasons that I have given, I would dismiss the present appeal.

ENNIS J. and DE SAMPAYO J. agreed.

Appeal dismissed.

