

1940

*Present : Howard C.J. and Wijeyewardene J.*THE KING *v.* JOSEPH97—D. C. (*Crim.*), 12,505.

Appeal—Meaning of the word “imprisonment”—Context of section 335 of Criminal Procedure—Definition in Interpretation Ordinance—Criminal Procedure Code, s. 335 (1) (d).

“Imprisonment” in section 335 (1) (d) of the Criminal Procedure Code means simple as well as rigorous imprisonment.

A PPEAL from a conviction of the District Judge of Colombo.

S. W. Jayasuriya (with him *C. J. Ranatunge*), for accused, appellant.

S. J. C. Schokman, C.C., for the Crown, respondent.

January 25, 1940. HOWARD C.J.—

This is an appeal from a finding and sentence of the Additional District Judge of Colombo given on July 11, 1939, sentencing the appellant to three months' rigorous imprisonment on each of two counts, the sentences to run concurrently. A preliminary objection is taken by Mr. Schokman on behalf of the Crown that such an appeal on the facts will not lie under the provisions of section 335 (1) (d) of the Criminal Procedure Code without the leave of the District Judge. In regard to this contention it has been argued by Mr. Jayasuriya that the interpretation to be given to the word “imprisonment” is to be gathered from section 2 (1) of the interpretation Ordinance. This provision reads as follows: “rigorous imprisonment”, “simple imprisonment” and “imprisonment of either description” shall have the same meaning as in the Penal Code, and “imprisonment” shall mean simple imprisonment. He therefore argues that in section 335 of the Criminal Procedure the word “imprisonment” means simple imprisonment and therefore the leave of the District Judge is not required.

We have given careful consideration to the provision of the Interpretation Ordinance and we think that that provision refers to penal sections of various Ordinances. Furthermore, Mr. Schokman has referred us to the opening words of section 2 of the Interpretation Ordinance which

provides that these definitions shall not apply if there is something repugnant in the subject or context. In this connection he invites attention to sections 90, 91, 311 and 312 (f) and (g) of the Criminal Procedure Code, the contexts of which he contends are repugnant to the definition of imprisonment as interpreted by the Interpretation Ordinance. I agree that to apply the definition provided by the Interpretation Ordinance to these sections would be repugnant and also that section 335 (1) (d) is on a similar footing and to apply the expression "simple imprisonment" to that provision would also be repugnant. We also think that the use of the expression "term of imprisonment" indicates that the section is referring not so much to the nature of the imprisonment but to the term for which it is imposed.

In these circumstances the preliminary objection is upheld and the appeal is dismissed.

WIJEYWARDENE J.—I agree.

Affirmed.
