[FULL BENCH.]

1917.

Present : Wood Renton C.J. and Shaw and Ennis JJ.

THE KING *v.* SAMARAWIRA.

114—D. C. (Crim.) Negombo, 11,240.

Contempt of court—Interference with the possession of receiver appointed by Court—Power of District Court to punish.

Possession of land by a receiver appointed by a District Court is possession of the Court, and contumacious interference with the possession of the receiver is punishable as a contempt of court. Such contemptuous interference *ex facie curiæ* with the possession of the receiver is punishable by the Supreme Court only, and not by the District Court.

THIS case was reserved for argument before a Bench of three Judges by Ennis J. The facts appear from the judgment of the Chief Justice.

J. S. Jayewardene (with him *Goonetilleke*), for accused, appellant. —The jurisdiction conferred on the Supreme Court in matters of contempt is governed by section 51 of the Courts Ordinance, which especially provides for cases in which the lower courts have no jurisdiction under section 59 of the same Ordinance.

Section 59 provides only for two classes of cases. The comma after the word " respectively " does not indicate three classes of cases. Punctuation is no part of a statute (Shaw J. referred to *Maxwell on the Interpretation of Statutes*).

Section 59 has always been construed in the manner submitted. Counsel referred to *1 N. L. R. 49, 1 N. L. R. 181, 1 C. W. R. 195, 2 S. C. R. 39, 8 N. L. R. 343, 2 S. C. R. 145, 1 Bal. Notes of Cases 52. 3 Bal. Notes of Cases 38.*

Section 59 is exclusive and gives only a limited jurisdiction to District Courts (Ennis J.:—A District Court is a Court of Record and must have the same powers as a Court of Record in England). It is only the Superior Courts of Record in England that can exercise the jurisdiction contended for by the Crown. A District Court is an inferior Court (section 440 of the Criminal Procedure Code).

S. Obeyesekera, C.C., for the Crown.—Section 59 confers only a special jurisdiction. It does not affect the general jurisdiction of a Court of Record. Counsel referred to *7 S. C. C. 203, 3 Lor. 36. and Ramanathan (1862) 196.* Bonser C.J. in *1 N. L. R. 306* did not accept the construction placed on section 59 in *1 N. L. R. 49.* Section 59 must be construed to include three different classes of cases.

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Jayewardene, in reply.—There were conflicting decisions prior to the Courts Ordinance (*1 Bel. & Vand. 152, 2 S. C. C. 192*). There is no procedure provided for the exercise of any other than the special jurisdiction (section 792 of the Civil Procedure Code). The case reported in *1 N. L. R. 49* is a Full Court case, and is binding on the Full Court.

Cur. adv. vult.

June 20, 1917. WOOD RENTON C.J.—

This case was referred by my brother Ennis to a Bench of three Judges for the determination of two points of law, viz., (i.) whether under the Courts Ordinance, 1889,[1] section 59, or otherwise, a District Court has power to punish as contempt of court interference with the possession of land by a receiver appointed by the Court; and (ii.) whether the appointment of the receiver in the present case was itself invalid. It was agreed at the argument of the appeal that the latter of these questions should be dealt with by my brother Ennis sitting as a single Judge, and it is only necessary, therefore, to consider the former.

I entirely agree with the learned District Judge that the possession of a receiver is the possession of the Court, and that contumacious interference with that possession is punishable as contempt. That is the law of England,[2] and I see no reason to doubt but that it is also the law of Ceylon. The point, indeed, is not devoid of local authority.[3] But the serious question that arises on the facts in the present case is whether contemptuous interference *ex facie curiæ* with the possession of a receiver is punishable by the District Court or only by the Supreme Court. Section 59 of the Courts Ordinance, 1889,[1] is in these terms: "Every District Court, Court of Requests, and Police Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish by the procedure and with the penalty in that behalf by law provided, every offence of Contempt of court committed in the presence of the Court itself, and all offences which are committed in the course of any act or proceeding in the said Courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court."

This section is obviously capable of two different constructions. It may mean either that the District Court may punish as contempt offences *in facie curiæ*, or offences (*a*) committed in the course of an act or proceeding in the District Court which (*b*) are declared to be so punishable by any law for the time being in force; or that the punitive powers in the District Court extend to offences (*a*) *in facie curiæ*, or (*b*) committed in the course of any act or proceeding in the District Court, or (*c*) declared punishable by the District Court by any law for the time being in force.

[1] *No. 1 of 1889.* [2] *See Oswald on Contempt, 2nd ed., pp., 76 and 77.*
[3] *Silva v. Wijeyesinghe, (1886) 7 S. C. C. 203.*

After careful consideration of the language of section 59, I think that it should be construed in the former sense. The fact that the section provides that District Courts and Courts of Requests shall be Courts of Record does not show that the Legislature intended to confer upon them unlimited jurisdiction in matters of this kind. The County Courts in England have been made Courts of Record by statute, but their jurisdiction to punish for contempt does not extend to acts done *ex facie curiæ*.[1]

But the point appears to me to be really covered by the decision of the Full Court in *Annamalay Chetty v. Guneratne*,[2] in which section 59 of the Courts Ordinance, 1889,[3] was expressly construed in this sense. In the older cases prior to the Courts Ordinance, 1889,[3] a different view of the then existing law was no doubt adopted,[4] and it is singular that in *Pieris v. Fernando*[5] Bonser C.J., with whose judgment Withers J., who had delivered the leading judgment in *Annamalay Chetty v. Guneratne*,[2] concurred, incidentally treated the construction of section 59 of the Courts Ordinance as if it were still *res integra*. Moreover, in *In re Ferguson*,[6] also a decision of three Judges, there are passages which seem to indicate that obstruction to officers of the Court in the execution of its process falls under the category of offences committed *in facie curiæ*. But, on the other hand, the interpretation of section 59 of the Courts Ordinance, 1889,[3] laid down in *Annamalay Chetty v. Guneratne* [2] was accepted by Wendt J. in *Perera v. Perera*,[7] by Pereira J. D. C. Colombo, 13,953,[8] and by Shaw J. in *Rengasamy v. Beale*. It seems to me that the case of *Annamalay Chetty v. Guneratne* [2] is binding upon us, and that on authority, as on principle, the learned District Judge had no jurisdiction to convict the appellant.

With this expression of opinion, I would remit the appeal to be finally disposed of by my brother Ennis.

SHAW J.—

The question referred to the Full Court for decision in this case is whether a District Judge has power to punish summarily, as a contempt of Court, in interference with the servants of a receiver appointed by the Court.

The District Courts are the creation of the Charter of 1833, and are the descendants of the Provincial Courts established by the earlier Charters and Proclamations.

The Provincial Courts had apparently no inherent power to punish for contempt, and by Regulation 2 of 1816 all cases of contempt of such Courts had to be transmitted to the Advocate Fiscal,

[1] *Silva v. Lefroy, (1873) L. R. 8 Q. B. 133; R. v. Jordan, (1888) 57 L. J. Q. B. 483.*
[2] *(1895) 1 N. L. R. 49.*
[3] *No. 1 of 1889.*
[4] *Silva v. Wijeyesinghe (ubi sup.) and cf. In re Brown, (1858) 3 Lor. 36; Lebbe Saibo v. Marikar. 1862) Ram. 196.*
[5] *(1895) 1 N. L. R. 306.*
[6] *(1874) 1 N. L. R. 181.*
[7] *(1906) 8 N. L. R. 343.*
[8] *(1915) 3 Bal. N. C. 38.*
[9] *(1915) 1 C. W. R. 195.*

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for him to decide whether the accusation should be tried by the Supreme Court or referred to an inferior jurisdiction; in which case the matter was referred to the nearest Court to that in which the offence occurred. This regulation was amended by Regulation No. 15 of 1820, which authorized the Provincial Courts to punish "all contempts committed before them before their own view, and also upon due proof all contempts of their process or of the officers acting in the execution thereof."

The Charter of 1833 establishing District Courts is silent as to whether they were to be considered as Courts of Record or not, and as to what, if any, powers they should have to punish for contempt of court.

By the rules and orders framed under the Charter and published with it power was given to the District Judges to punish "all contempts committed before themselves, and also upon due proof all contempts of their process or of their officers acting in the execution thereof."

This rule was repealed by a subsequent rule of October 21, 1844, with the result that the jurisdiction to punish for contempt, if any, was left to be inferred from the Charter itself or from the general law.

Courts of Record are those the orders and judicial proceedings of which are enrolled for a perpetual memorial and testimony, and the records of which are absolutely authoritative, as distinguished from Courts not of record, the acts of which may be evidenced by rolls and records, but are not established absolutely thereby, and must be proved like other facts (see *Encyclopædia of Laws of England 434*).

The Supreme Courts of Record in England have always had full power to deal summarily with contempts of their authority, and the power dates back to the time when the Sovereign personally, or his immediate representative, sat to administer justice (see *ex parte Joliffe, 42 L.J.Q.B. 121*): "It is laid down by high authorities, and is according to the reason of the thing, that every Court of Record has power to fine and imprison for contempt committed in the face of the Court, while the Court is sitting in the administration of justice. Such a power is obviously necessary for the administration of public justice. But it is a very different thing to say that a Court shall have power to fine and imprison for contempts not committed in the face of the Court, and not amounting to an actual obstruction of the course of justice, but only to the use of contumelious language, or the publication of articles or comments reflecting on the conduct of the Judge. It is laid down by Hawkins (Pleas of the Crown) and other writers of authority that the power of committing for contempt committed in the face of the Court is given to Inferior Courts, but it is nowhere said that they have power to punish contempts committed out of Court." (Cockburn C.J. in *ex parte Jolliffe* (*supra*).)

The District Courts established under the Charter of 1833 have always been regarded as Courts of Record, and notwithstanding the absence of direct authority in the charters and rules to deal with cases of contempt, such a jurisdiction was frequently exercised by them as being an inherent power, and in the case *In the Mater of the Application of John Ferguson for a Writ of Prohibition against the District Judge of Colombo*,[1] the Full Court held that, although the District Courts, being Courts of Record, had an inherent power to punish summarily contempts in the face of the Court, which included " any insult to the Judge while in the discharge of his duties, such as interruption of the proceedings of the Court, disobedience to its lawful orders or process, obstruction to its officers in the execution of its process or orders, and other acts of a like nature." Yet, being Inferior Courts of Record, they had not the full jurisdiction to punish all descriptions of contempt such as is possessed by the Superior Courts in England and the Supreme Court in Ceylon.

In this condition of the law the Courts Ordinance, 1889, was passed. This Ordinance is not a mere consolidation Ordinance, but, as the preamble states, it is an Ordinance " to consolidate and amend the laws relating to the constitution, jurisdictions and powers of the Courts."

The jurisdiction of the Inferior Courts in respect of contempt of court is set out in section 59, which runs as follows: " Every District Court, Court of Requests, and Police Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish by the procedure and with the penalties in that behalf by law provided, every offence of contempt of court committed in the course of any act or proceeding in the said Courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court."

Section 381 of the Criminal Procedure Code, 1898, provides for the summary punishment by the Inferior Courts of certain offences in the nature of contempts of court " committed in view of presence of " the Court.

These are the offences under section 173 of the Penal Code of refusing to produce documents, under section 176 of refusing to take the oath, under section 177 of refusing to answer questions, under section 178 of refusing to sign a statement, and under section 223 of insult or interruption to a public servant sitting in any stage of a judicial proceeding.

Section 380 of the Criminal Procedure Code provides that certain other offences, in the nature of contempts of court, referred to in section 147, clauses (*b*) and (*c*), shall be sent for inquiry and trial to the nearest Police Court, and finally, after providing the procedure

[1] *(1874) 1 N. L. R. 181.*

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by which the summary proceedings shall be governed by section 384, the Code provides that, except as provided, "no District Judge or Police Magistrate shall try any person for any offence referred to in section 147, clauses (*b*) and (*c*)" (which include all the offences mentioned in section 381), "when such offence is committed before himself or in contempt of his authority or is brought under his notice as such District Judge or Magistrate in the course of a judicial proceeding."

We are asked on behalf of the respondent to the present appeal to hold that section 59 of the Courts Ordinance, 1889, is not exhaustive of the powers of the District Courts to punish summarily for contempt, and to say that those Courts still have an inherent power to punish summarily all contempts such as are referred to in the judgment in *Ferguson's case*, cited *supra*, although such contempts may not have been declared by any law for the time being in force to be punishable as contempts of court. We are also asked to read section 59 as intending to give District Courts, Courts of Requests, and Police Courts powers to punish summarily three classes of contempts: (1) contempts committed in the presence of the Court itself, (2) contempts committed in the course of any act or proceeding in the Court, and (3) offences declared by any law to be punishable as contempts of court.

I do not think we can do any of these things. The Courts Ordinance, 1889, is, as I said before, not merely for the purpose of consolidating, but also of amending the law, and in my opinion section 59 is intended to be exhaustive of the powers of the Inferior Courts to punish for contempt, and to hold otherwise would render nugatory and meaningless the provisions of sections 180, 181, and 184 of the Criminal Procedure Code, 1898, cited above.

To read section 59 of the Courts Ordinance in the manner suggested, it would be necessary to read the last sentence of the section "and which are declared by any law for the time being in force to be punishable as contempts of court" as "or which are declared," &c., or to interpolate the words "also all offences" after the word "and." To so alter the wording of a legislative enactment would be contrary to be first principles of the construction of the Statutes, if sense can be made in any other way.

If there is any difficulty arising from the presence of the comma before the final paragraph of the section, as is contended on behalf of the respondent, that comma must be disregarded, for it is a well-established rule that punctuation is not to be taken as part of a Statute (see *Maxwell on Interpretation of Statutes 62*).

Even had my own opinion on the point referred to us been different, I should have felt constrained to come to the same conclusion that I have, because the case appears to me to be clearly covered by the Full Court decision in *Annamalay Chetty v. Guneratne.*[1]

[1] *(1895) 1 N. L. R. 49.*

In that case it was held that disobedience by a judgment-debtor of an order made by the District Court under section 219 of the Civil Procedure Code for his examination, is not punishable by the District Judge as a contempt of court, the reason given in the judgment of Withers J., and agreed to by Browne J. and Lawrie A.C.J., being that the Court's jurisdiction to deal with offences of contempt was limited to the provisions of section 59 of the Courts Ordinance and to special provisions in the Civil Procedure Code, and that disobedience to an order of the kind in question by a judgment-debtor is not made punishable by any law as a contempt of court.

This decision has been recognized as law and followed in subsequent cases, of which I will mention *Perera v. Perera* [1] and *Rengasamy v. Beale,*[2] and is binding on this Court.

I would answer the questions referred to us by saying that the District Judge had, in the present case, no jurisdiction to punish the appellant summarily for contempt of court.

ENNIS J.—

I have had the advantage of reading the judgments of my Lord the Chief Justice and my brother Shaw, and agree with them that the District Court had no power to try this case. Section 59 of the Courts Ordinance must be considered with sections 380, 381, and 384 of the Criminal Pocedure Code, and, in the light of those sections, section 59 must be read as giving District Courts the less extensive jurisdiction.

I need not further consider the second point contended for by the counsel for the appellant.

I allow the appeal and set aside the conviction.

Set aside.

[1] *(1906) 8 N. L. R. 348.*

[2] *(1915) 1 C. W. R. 195*