

1937

*Present*: Abrahams C.J.

WEERASINGHE v. PETER.

563—P. C. Matale, 20,381.

*Bind over to keep the peace— Nature of information in support of charge—  
Breach of peace imminent—Breach of peace on the part of person other  
than accused—Criminal Procedure Code, ss. 81 and 84.*

The information on which a person is bound over to keep the peace under section 81 of the Criminal Procedure Code must be direct and not hearsay. A breach of the peace in respect of which a person is called upon to give security must be shown to be imminent or in contemplation at the time the information is given or the order asked for.

Where a summons makes an allegation upon which is based a charge that a person is likely to commit a breach of the peace, the charge cannot be established by facts leading to the conclusion that the breach of peace will be committed by some other person owing to the wrongful acts of the person charged. *Jamal v. Aponsu* (2 Times of Ceylon L.R. 215) followed; *Pietersz v. de Silva* (3 C. W. Rep. 361) distinguished.

**A** PPEAL from an order made by the Police Magistrate against the appellant under section 81 of the Criminal Procedure Code to enter into a bond to keep the peace.

*Hayley, K.C.* (with *R. C. Fonseka*), for appellant and petitioner in application.

*H. V. Perera, K.C.*, (with *B. H. Aluwihare*), for respondent to appeal and application.

October 14, 1937. ABRAHAMS C.J.—

The appellant was ordered by the Police Magistrate, Matale, under section 81 of the Criminal Procedure Code, to enter into a bond for the sum of Rs. 100 to keep the peace for six months. Against this order he appeals.

The proceedings were instituted by a Mr. C. S. Peter, superintendent of an estate, who swore an information which is sufficiently instructive, in view of the nature of the proceedings, to be reproduced verbatim. This is what he said :—

“ A portion of the Bambaragala estate is planted in cardamoms for the last thirty or forty years. I have been in charge of the estate for five years. For the five years I have been taking the produce. On the 15th instant evening I heard from my Assistant that Weerasinghe and some Singhalese men had entered the cardamom field and had cleared the land. I went there on Sunday the 16th and I found nobody at work. I again went on the 17th Monday, and the watcher gave me information that Weerasinghe and some five Singhalese labourers had been picking cardamoms. I reported the matter to the Rattota Police. On the 17th there was no reserve constable. They sent a P. C. on the 18th. I accompanied him. Three of the coolies were there watching on the road in the cardamom area. They were taken by the Police and my watcher identified these three as the men who were picking cardamoms on the previous day. The constable warned them not to come back. The following day they came back again. I again sent for the Police and on the 20th I received information that Weerasinghe had stopped my firewood contractors from removing my firewood. I received information that Weerasinghe insisted on occupying the land even if it came to the matter of using firearms. I anticipate breach of the peace between my own labourers and Weerasinghe. I do not want to take the law into my own hands. ”

In view of the fact that none of the allegations in this information were direct but the facts alleged had reached the informant by hearsay, I do not think that the learned Magistrate was justified in issuing process. However, a summons was issued under section 84 of the Criminal Procedure Code, the material portion of which runs as follows :—

“ Whereas it has been made to appear to me by credible information that you stopped the firewood contractor of Bambaragala estate from removing firewood and insisted on occupying a portion of Bambaragala estate and that you are likely to commit a breach of the peace..... ”

By section 85 of the Code this summons should have contained a brief statement of the substance of the information on which the summons was issued, in order of course that the person summoned should have notice of the facts upon which it is alleged that he is likely to commit a breach of the peace. On the face of it the appellant must have assumed either that the breach of the peace which he was likely to commit was in stopping the firewood contractor, or on his insistence of his occupying a portion of Bambaragala estate which, of course, in itself is not a breach of the peace, unless insistence means the exercise of violence, or that in addition to these two allegations of aggressiveness he was in some vague general way believed to be likely to commit a breach of the peace.

On his appearance in the Police Court, the informant, Peter, gave no direct evidence of the appellant's conduct. He said that he had heard that the appellant and his men had been picking cardamoms on a portion of the estate which he claimed to be his, and he gave evidence of title. He said he apprehended a clash between his coolies and the appellant's coolies as the appellant had wrongly put out a site for building. He had not himself spoken to the appellant but his assistant, Bolling, had actually done so, and his attitude appears to have been that of a man who had restrained himself from committing some act of violence under great provocation, and his evidence appears to give the impression that he was prepared to assert his rights as owner with some act of violence unless his application against the appellant was successful.

The firewood contractor, interference with whom was made so important a part of the summons, was not called to give evidence and Peter informed the Court that the contractor did not tell him how he was prevented from carrying out his contract.

Bolling, the assistant superintendent, gave direct evidence of the picking of these cardamoms, and the claim on the part of the appellant that he was acting for a certain Dr. Hunt who bought the place. Bolling added that the appellant told him that none of the estate coolies should enter the cardamom portion till he and Mr. Peter had had a fight for the land. Bolling appeared to think that this indicated an intention on the part of the appellant to challenge Peter to a trial of physical strength. I do not agree. I think that this statement about a fight was used figuratively, and that is supported by a letter which Bolling sent to his principal in which he said that the appellant had stated his intention of filing an action against Peter for cutting the jungle trees in his cardamom plot, and that the appellant had added that none of the estate coolies should enter the field till "he and you fights for the place".

The appellant did not give evidence nor did he call any witnesses. I think that the learned Magistrate was entitled to draw from his silence an inference of his inability to justify his entry upon the estate, but that is far from saying that he was justified in holding that there was proof that a breach of the peace was likely to occur. The Magistrate said: "The petitioner seeks to have the respondent bound over as the continued unlawful acts on the part of the respondent would probably occasion a breach of the peace". The learned Magistrate has also said that in view

of the state of the feelings between the parties, judging by the letter of Bolling written to Peter, any more wrongful acts would probably result in a clash. He thought that if the firewood contractor was prevented from removing firewood there was a reasonable likelihood of a clash taking place. In view of the fact that the firewood contractor was not called, how was it possible to say what was the prevention which the appellant planned? Moreover, there was no evidence whatever that the appellant was threatening to use any violence against anybody since, as I have said, the expression "fight" he is said to have used to Bolling, in my opinion was used in a figurative sense only. That being so, if any violence was likely to be exercised against the appellant it would proceed from Peter or his men. The learned Magistrate seemed to think that the appellant once having established himself on the estate would proceed to further acts implying ownership by putting up a building, picking cardamoms, clearing the jungle, and preventing the coolies on the estate and the firewood contractor from performing their lawful duties. This is vague, speculative, and distant. In *Jamal v. Rebecca Aponsu*<sup>1</sup>, Jayewardene J. said that, "A breach of the peace in respect of which a person is called upon to give security must be shown to be imminent or in contemplation at the time the information is given and an order asked for". It does not seem to me that a breach of the peace was imminent at the time the order was asked for nor can I see who was contemplating it. An anticipation of a breach of the peace that would take place at some distant date cannot be regarded as contemplation.

There is also this further point. The summons alleged that it was the appellant who was likely to commit a breach of the peace. The Magistrate found that it was likely that the wrongful acts of the appellant would cause a conflict, and justified his finding on the authority of de Sampayo J. who said in the case of *Pietersz v. de Silva*<sup>2</sup>, that "The intention to commit a breach of the peace need not necessarily be on the part of the person charged . . . it is sufficient if the person charged does any wrongful act that may probably occasion a breach or the peace on the part of another person". I have carefully examined that case but I do not find in it any ground for holding that where a summons makes an allegation upon which is founded a charge that a person is likely to commit a breach of the peace, at the hearing another set of facts can be put forward leading to the conclusion that it is somebody else who will commit a breach of the peace owing to the wrongful acts of the person charged. I think that the absence from the summons of all those necessary facts from which the learned Magistrate came to his finding would justify me in quashing his order, but, as I have said above, the vagueness and speculativeness of the evidence are insufficient to maintain this order. Every case in which a party, who says his land is being invaded, comes to Court and says that unless the trespasser is bound over to keep the peace he himself may break the peace does not necessarily call for an order under section 81 of the Code.

<sup>1</sup> 2 *Times of Ceylon Law Rep.* 215.

<sup>2</sup> 3 *C. W. Rep.* 361.