1941 *Present :* **Howard C.J. and Soertsz J.**

THE KING *v.* PERERA.

23—D. C. (Crim.) Galle, 15,876.

Evidence—Bad character of accused given by witness—Other evidence to support conviction—Evidence not fatal to conviction.

Evidence of the bad character of the accused given in a trial before the District Court is not fatal to a conviction if the circumstances of the case are such that there is other evidence to convict the accused and there is nothing to indicate that the District Judge was influenced by the evidence in convicting the accused.

APPEAL from a conviction by the District Judge of Galle.

S. W. Jayasuriya, for the accused, appellant.

O. L. de Kretser (Jnr.), C.C., for the Crown, respondent.

Cur. adv. vult.

July 1, 1941. HOWARD C.J.—

This is an appeal from a conviction of the appellant by the District Judge of Galle, on a charge of committing theft. Counsel for the appellant has not contended that there was not evidence to justify the conviction. He has, however, maintained that, inasmuch as evidence of the previous bad character of the appellant was tendered in examination-in-chief by one of the witnesses for the prosecution, the conviction should not be allowed to stand. The evidence in question was given by the witness William Singho in examination-in-chief. He stated as follows :—

> "I was expecting a reward from the accused. I have been a friend of the accused for fifteen years. I knew him in jail when we were together."

There is no doubt that, if such evidence had been admitted in a trial before a Judge and jury, the conviction could not have been allowed to stand. The law was given careful consideration in the judgment of the Lord Chancellor in *Maxwell v. Director of Public Prosecutions*[1]. In the course of that judgment Lord Sankey stated as follows :—

> "Such a fact is, therefore, irrelevant; it goes neither to show that the prisoner did the acts for which he is actually being tried nor does it go to his credibility as a witness. Such questions must therefore be excluded on the principle which is fundamental in the law of evidence as conceived in this country, especially in criminal cases, because, if allowed, they are likely to lead the minds of the jury astray into false issues; not merely do they tend to introduce suspicion as if it were evidence, but they tend to distract the jury from the true issue, namely, whether the prisoner in fact committed the offence on which he is actually standing his trial. It is of the utmost importance for a fair trial that the evidence should be prima facie limited to matters relating to the transaction which forms the subject of the indictment and that any departure from these matters should be strictly confined."

[1] *(1934) 103 L.J.Q.B. 501.*

In this passage the Lord Chancellor was referring to the relevancy of evidence as to the bad character of an accused person. The principle applies to the admissibility in the present case of evidence indicating that the appellant had been to jail. With regard to the effect of the admission of such evidence on the validity of the conviction the Lord Chancellor stated as follows :—

> "It was further argued by the prosecution that, even if the evidence was wrongly admitted, the prisoner was not entitled to have the verdict and sentence set aside by reason of the proviso to section 4 of the Criminal Appeal Act, 1907, which says that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice had actually occurred. Probably upon no other section of the Act have so many cases been decided as upon this one. Their name is legion. The rule which has been established is that, if the conviction is to be quashed on the ground of misreception of evidence, the proviso cannot operate unless the evidence objected to is of such a nature and the circumstances of the case are such that the Court must be satisfied that the jury must have returned the same verdict even if the evidence had not been given."

It could not have been maintained that a jury in the present case must have arrived at a verdict of guilty if they had not known that the appellant had previous to this offence been in jail. But do the same principles apply in a case tried before a District Judge ? In *Cooray v. Romel*[1], the question was considered, but Wood-Renton J. held on appeal that no exception could be taken to the evidence having regard to the manner in which it was elicited. In *V. Coomaraswamy, Sub-Inspector of Salt v. M. Meera Saibo and 5 others*[2], de Kretser J. in quashing a conviction and ordering a new trial on the ground that in the course of the proceedings from time to time statements were made indicating that the accused were dangerous criminals who were likely to terrify people and generally reflecting on them, stated as follows :—

> "It is not suggested that the learned Magistrate was influenced by these statements but the accused may very well have gained the impression that he was so influenced. It is necessary not only that the administration of justice should be pure but it should be seen to be pure and considered to be pure."

From the report of this case it would appear that the trial which took place before a Magistrate who was not a trained and experienced lawyer was generally speaking of an unsatisfactory character. In the present case the District Judge convicted on ample evidence and it has not been suggested nor is it possible that in convicting the appellant he was in any way influenced by the fact that the latter had previously been in jail.

The appeal for the reasons I have given is dismissed.

SOERTSZ J.—I agree.

Affirmed.

[1] *2 Bal. Notes of Cases 42.*

[2] *5 Cey. L.J. 68.*