

1921.

Present : Ennis J.

THE KING *v.* JAMES APPU *et al.*

767-768—*P. C. Tangalla, 11,087.*

*Contempt of Court—Complainant absent—False report that he was ill—
Report produced by police officer—Charge of contempt against
complainant and police officer.*

On the day fixed for inquiry the complainant (first accused) failed to appear, and the second accused, who was a police officer, produced a report to the effect that complainant was ill. It appeared to the Magistrate that complainant was not ill, and he proceeded against the complainant and police officer under section 59 of the Courts Ordinance, and convicted them of contempt of Court.

Held, that the conviction was bad. "It is questionable whether the offence, if any (of the complainant), was committed in the presence of the Court itself."

THE facts appear from the judgment.

Keuneman, for the appellants.

M. W. H. de Silva, C.C., for the Crown.

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*The King v.
James Appu*

September 5, 1921. ENNIS J.—

These are two appeals from convictions and sentences for contempt of Court.

The first accused was a complainant in a criminal action, and the second accused was a police officer. The action was postponed many times until one day the complainant failed to appear, and a report was produced by the second accused to the effect that the complainant was ill and unable to attend Court. The Judge thereupon sent a medical officer to see the first accused, and the medical officer said that he was then fit and able to attend Court, but that he might have had fever that morning. A vedarala gave evidence that he had been called in to attend on the first accused, and had prescribed for him for fever.

The learned Judge proceeded to deal with this case under section 59 of the Courts Ordinance. Section 59 of the Courts Ordinance gives jurisdiction on a Police Court to deal with cases of contempt, although by the procedure and with the penalties in that behalf provided for offences of contempt of Court committed in the presence of the Court itself.

It is reasonable whether the offence, if any, in this case has been committed in the presence of the Court itself, and the Crown Counsel, who appears for the respondent to this appeal, has not been able to suggest either the procedure or the penalties provided by law for a case of this kind.

Section 381 of the Criminal Procedure Code is the main law which provides for contempt committed in the presence of the Police Court, and that section clearly does not apply in the present case.

In convicting the police officer, the learned Judge appears to have considered that he has committed an offence by neglecting the duty of verifying the facts before submitting a report. I fail to understand what offence the learned Judge refers to. The police officer apparently was asked for his own opinion, and having seen the first accused, he expressed an opinion, but he could not be convicted for contempt if that opinion happened to be wrong or in conflict with the medical officer's. The medical officer, however, is not prepared to say that the first accused was not suffering from fever at the time he alleged he was.

In the circumstances, the conviction is bad in both cases, and I set it aside, and acquit the accused.

Set aside