

QUEEN v. SILVA.

1901.

January 16
and 18.

D. C., Kalutara, 1,113.

Nature of order to pay Crown costs and compensation—Plea of autrefois convict—Summary trial by District Judge—Criminal Procedure Code, s. 152 (3).

Per BROWN, A.J.—An order to pay Crown costs and compensation under section 197 (1) of the Criminal Procedure Code is not a penalty. It only recoups the Crown its expenses and the acquitted party his costs and loss of time.

Therefore, the person cast in Crown costs and compensation for bringing a false charge cannot, when prosecuted for the offence of bringing a false charge under section 208 of the Penal Code, plead *autrefois convict*.

Where a Magistrate, after receiving the complaint of an offence and recording the examination of the complainant, requested another judicial officer, who was both Magistrate and District Judge, to hear the case,—

Held, that it was not competent to the latter to adopt the procedure of section 152 (3) of the Criminal Procedure Code, upon the mere examination of the complainant recorded by the former Magistrate, and without stating that the offence might properly be tried summarily by him, and that a conviction resting upon such a state of the record was bad.

THE accused in this case was indicted before the District Court of Kalutara under section 208 of the Penal Code with having brought a false charge of theft against one Fernando in Police Court case No. 10,061.

He pleaded *autrefois convict*, in that he had already paid Rs. 30 as compensation and Rs. 5 as Crown costs in terms of an order of the Police Magistrate in the original case No. 10,061.

The District Judge held that the award of the Police Magistrate was no bar to the present prosecution and, proceeding to hear the case, found the accused guilty and sentenced him to to a fine of Rs. 250.

Accused appealed.

Sampayo (with *Elliott*), for appellant.

Walter Pereira, Acting S.-G., for respondent.

Cur. adv. vult.

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In acquitting parties accused of theft from a dwelling-house the Magistrate said: "This is a palpably false case. The evidence for the prosecution is simply made up. I am quite convinced that this false case is instituted against accused owing to the dispute," &c. And he then ordered the complainant straight away, without calling on him to show cause, &c., to pay compensation under the Criminal Procedure Code, section 197 (1), for instituting a frivolous case. He evidently had not read 1,444, P. C., Tangalla, (*Browne's Rep. 34*), or he would not have confounded together false and frivolous charges.

One of those accused in those proceedings subsequently prosecuted herein the then complainant for an offence against section 208 of the Penal Code.

The Magistrate received and recorded the oral complaint, and then in fairness requested the gentleman who is the District Judge and Additional Police Magistrate to hear the case with "a new mind," and he, after disposing of a plea of *autrefois convict* proceeded to avail himself of the procedure of section 152 (3) of the Criminal Procedure Code. But I doubt he could do so upon the mere examination of the complainant made by another than himself, and he has not recorded that he was of opinion that the offence charged might properly be tried summarily by him. His reason was stated by him to be that the charge was one triable by a District Judge, and that he held the dual office of Judge and Magistrate. That *per se* is not sufficient reason for exempting non-summary charges from the operation of chapter XVI. I must therefore hold these *summary* proceedings were not regularly initiated.

As to the plea of *autrefois convict*, I agree with Mr. Solicitor that under section 330 of the Criminal Procedure Code it is absolutely necessary that the previous conviction or acquittal must be in respect of the same charge as the subject or the second prosecution, and that a mulcting in Crown costs and compensation is not a conviction of an offence against section 208 of the Penal Code. The former pays no penalty to the State. It only recoups the State its expenses and the acquitted party his costs and his loss of time. The test is the record of the prior charge and the finding thereon; are they identical with the matter of the new charge?

As to the present trial, I must point out that the irregularity of putting evidence in Police Court proceedings *en masse* has been commented on before now. The charge, its date or nature, or the conviction, or what particular evidence a witness gave, may be proved specifically. But the whole of prior proceedings are

not, by the fact that they were had, necessarily admissible as evidence, nor will consent thereto avail in criminal prosecutions.

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Here the onus lay on complainant to prove that he had been falsely charged with theft from accusel's house on the night of 21st (22nd) September. He swore he never in his life had been at Kahutara before that, and adduced evidence he was ill on 26th September when arrested. Accused deposed that complainant and two others had slept in his house the night he was robbed, and proved that he made prompt complaint next morning when he found their party gone and his money with them. In the conflict of testimony I do not consider the tobacco controversy or rivalry motive as *per se* a sufficient factor whereby to decide the criminality of the appellant, and I set aside the conviction and acquit the accused.

BROWNE,
A.J.

