

1899.
July 29.

SILVA *et al.* v. JONNA.

P. C., *Avissawella*, 2,801.

Criminal Procedure Code, s. 440—False evidence—Contempt of Court—Irregularity.

It is irregular to call upon several witnesses *en masse* to show cause why they should not be punished for giving false evidence. The proper course is to call the attention of each to the particular statement he had made, and to give him an opportunity to explain it.

It is the duty of the Magistrate to give his reasons for holding that each of the accused told a deliberate untruth.

TN this case the complainant and four of his witnesses were called upon in a body to show cause why they should not be punished for giving false evidence, and they were collectively fined as for contempt of Court under section 440 of the Criminal Procedure Code. The Police Magistrate found that they gave false evidence within the meaning of section 188 of the Penal Code, in the course of a trial of certain persons charged with the theft of a hackery belonging to the complainant.

On appeal, *Dornhorst*, for appellant.

29th July, 1899. WITHERS, J.—

The appellants were asked to show cause why they should not be punished for giving false evidence. What opportunity was actually given to them for showing cause is not very clear. Not one of these persons said anything in answer to the charge, but it is recorded that the complainant's proctor argued that it would be very inconsistent on the part of the Police Magistrate to hold that these witnesses were not telling the truth about the hackery, when he accepted their evidence above the bull found with the hackery and convicted the accused in that case (who is the same as the present accused) on their evidence. [After dealing with the merits of the case, his Lordship continued.] The 440th section of the Criminal Procedure Code is with one slight exception a repetition of the Oaths Ordinance of 1895, and it seems to me that the Magistrate exercised an improper discretion in dealing with the appellants in this case as he has done.

If, as the Magistrate believes, the complainant suborned these witnesses to swear that this cart was his, and they supported him in this perjury about the hackery, they deserve a far greater punishment than the Magistrate has thought fit to impose. He ought to have sent the record to the Attorney-General, or to have sent the case for inquiry to the nearest Police Court.

It was moreover, irregular to call upon these five persons *en masse* to show cause why they should not be punished for

telling a lie. They did not join in swearing to a common lie. Each should have had his attention called to the particular statement he had made, and which the Magistrate regarded as a deliberate untruth, and have been asked if he could explain it. Besides, the Magistrate has given no reasons for his opinion that each of these persons told a deliberate untruth. This the 440th section requires.

I feel bound to quash these sentences.

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WITNESS, J.

