

[IN REVISION.]

Present : Bertram C.J.

ABEYEWARDENE v. FERNANDO *et al.**P. C. Ratnapura, 26,630.**Breach of the peace—Meaning of the term—Use of violence—Affray—Two opposite factions tried together.*

A breach of the peace, within the meaning of sections 80 and 81 of the Criminal Procedure Code, involves some violent interference either with person or property or some violent act calculated to alarm the King's subjects.

The rule, that persons of opposite factions involved in a public disturbance cannot be tried together, doubted.

APPPLICATION to revise an order made by the Police Magistrate of Ratnapura.

Soertsz, for the applicant.

November 4, 1924. BERTRAM C.J.—

This is a case in which two rival boutique keepers have been bound over to keep the peace under section 81 of the Criminal Procedure Code. Mr. Soertsz, who appears for one of them, a woman, appeals both on the facts and on the law. His point on the law is a familiar one, namely, that the proceedings are irregular, because two persons acting adversely in connection with the apprehended breach of the peace have been united in the same charge. A number of cases has been cited to show that where persons before the Court are members of opposite factions involved in a disturbance, they ought not to be tried together, but should be tried separately. The cases in question are amongst others: *Velaiden v. Soysa*,¹ *Wickremesuriya v. Don Lewis*,² *Keegal v. Mohideen*,³ and *Police Officer v. Dineshamy*.⁴ The principle of these cases is now so thoroughly established that it is impossible for a judge, sitting as I am now sitting, not to follow it. I cannot help myself regretting the establishment of this principle in our Courts.

It seems to me that in cases of this sort where there is a mutual assault or affray in a public place, or any sort of disturbance between various persons, it would often be most convenient and reasonable

¹ (1910) 14 N. L. R. 140.

² (1915) 1 C. W. R. 192.

³ (1918) 5 C. W. R. 162.

⁴ (1919) 21 N. L. R. 127.

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to bring them together before the Court, have all the circumstances investigated, and have the several accused dealt with according to their responsibility. I cannot see that any good end would be served in ordinary cases by breaking up the proceedings and repeating the evidence against each individual. I observe that this principle has been developed in our books possibly with the help of Indian authorities ; but I do not think that it is in accord with the English law. My impression is that in the case of duellists the procedure always was, if they were detected when they were about to commence a duel, to bring them both before the justices and bind them over. This seems to me in most cases both a reasonable and a just course. There may, of course, be cases in which it would be desirable that the individual persons disturbing the peace should be tried separately. But this might be left to the discretion of the Court. However, it is too late for a single judge to question this principle, and the matter can only be effectively questioned before a Full Court. I therefore allow Mr. Soertsz's point on the law.

With regard to this appeal on the facts, it would serve no useful end to send this case back for a new trial, because I think the learned Magistrate is under a misconception, which is perhaps not an unnatural one. It is very common for persons reading such provisions as sections 80 and 81 of the Criminal Procedure Code to misinterpret the term "breach of the peace" as the learned Magistrate seems to have interpreted it. It might naturally be supposed that any disturbance of public tranquillity by noisy and quarrelsome language or shouting or singing would be a breach of the peace. But that is not the meaning of the phrase. The Magistrate himself has interpreted the phrase in this way. He says : "They are both cantankerous and quarrelsome people and are likely to create a breach of the peace. They have an eternal cause of quarrel. I have given ample opportunity to them to come to their senses and live amicably, but they are equally stubborn and stupid." The learned Judge does not seem to apprehend that any act of positive violence is going to take place, but merely that the tranquillity of the neighbourhood will be disturbed by the persistent quarrel between these persons. This, however, does not appear to be the meaning of the phrase. The peace referred to is the King's peace. The King is entitled to require that all persons living under the protection shall not be subjected to violence in respect of their persons or their property. Any person who does subject to violence either the person or property of one of the King's subjects has committed a breach of the King's peace.

In England every indictment for a crime concludes with a statement that the act complained of is an act against the peace of our Lord the King, his Crown and Dignity. The principle will be found explained in a brief article on "The Peace" in Wood Renton's

Encyclopedia, vol. XI., page 6. A breach of the peace appears to involve some violent interference either with person or property, or apparently some violent act calculated to alarm the King's subjects. An affray is a breach of the peace because there is natural violence. The subject will be found discussed in the article in Lord Halsbury's *Law of England on Criminal Law and Procedure*, vol. 9, p. 297, in a long note to paragraph 610. It is there said: "A breach of the peace is committed when there is an actual assault, or when public alarm and excitement are caused by a person's wrongful act. Mere annoyance and disturbance, or insult to a person, or abusive language, or great heat and fury without personal violence do not constitute a breach of the peace. A person who is present at a public meeting and disturbs the meeting by derisive cries and making observations does not commit a breach of the peace." It would, no doubt, be a most convenient provision from the point of view of the police authorities that persons who disturb the public tranquillity should be required to give security under penalty of being sent to prison. But I do not think that this is the meaning of sections 80 and 81 of the Criminal Procedure Code.

The appeal, therefore, must be allowed.

Set aside.

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