

1948

*Present : Dias J.*

*In re ASLIN NONA et al.*

*Elections Order in Council—Perjury—Power of Judge to punish—Powers of District Judge—Section 78, sub-section (3)—Oaths Ordinance, s. 11.*

The powers of an Election Judge to punish a witness for giving false evidence are no greater than those of a District Judge under section 11 of the Oaths Ordinance, by virtue of section 78 (3) of the Parliamentary Elections Order in Council, 1946.

**O**RDER made in respect of certain witnesses who gave false evidence during the trial of Election Petition No. 13 of 1947 (Election for Colombo South Electoral District).

*A. H. C. de Silva*, for parties noticed.

August 25, 1948. DIAS J.—

After hearing the argument of learned Counsel, I think his construction of section 78, sub-section 3 of the Order-in-Council is right, although it is by no means clear on a reading of the section that the law-giver intended that the Chief Justice or a Judge of the Supreme Court nominated by the Chief Justice to hear an Election Petition, who are designated Election Judges, should have punitive powers of summarily punishing witnesses for flagrant perjury, no greater than a District Judge. This is a highly penal enactment and therefore in the case of ambiguity must be construed liberally in favour of the subject. The use of the word "same" in the phrase "shall be subject to the same penalties for the giving of false evidence" seems to mean the same penalties for the giving of false evidence in a District Court.

Under section 11 of the Oaths Ordinance, the powers of a District Judge to punish summarily a false witness for contempt of Court only extends to the imposition of a fine of Rs. 50, in default of payment of such fine to two months' rigorous imprisonment.

In the circumstances, I set aside the orders in regard to these witnesses which were made *per incuriam* and, as most of them have been in custody for 24 hours, I think the fairest order to make is to quash the order and to make no further order.

I could, of course, direct the proper authorities to initiate proceedings against these persons for giving false evidence within the meaning of section 190 of the Penal Code but, in the circumstances, I do not do that, as the initial order was not in accordance with the section.

*Orders set aside.*

