1924. *Present :* Bertram C.J., De Sampayo J., and Garvin A.J.

THE KING *v.* PABILIS.

9—P. C. Kurunegala, 20,431.

Evidence—Statement made by complainant at the police station—May written record from information book be produced in evidence by the prosecution ?—Corroboration.

A spontaneous complaint made at the police station to a police officer by an aggrieved person, though it may become the foundation of an investigation under chapter XII. of the Criminal Procedure Code, is not itself to be regarded as a statement made by a person examined orally under section 122, and that, consequently, this complaint having been reduced to writing, the written statement may be given in evidence under section 157 of the Evidence Ordinance independently of any restrictions which may be supposed to be prescribed by section 122, sub-section (3), of the Criminal Procedure Code.

THE Chief Justice referred the point involved in this case to a Bench of three Judges by the following order :—

May 26, 1924. BERTRAM C.J.—

In this case the accused person was convicted under section 357 of the Penal Code of the abduction of a young woman with intent that she might be seduced to illicit intercourse. I have thought it necessary in connection with this case to reserve for further consideration a question under the Law of Evidence. That question is the extent to which complaints entered in the police information book by an officer in charge of a station may be used as evidence against an accused person.

The facts of the case are as follows :—Two young women who had been to visit a relative at a village some way from their home were returning home in the dusk of the evening. They

passed on the road near a tavern a group of six young men who had obviously been drinking. Two of these young men seized the young women and carried them off separately into the fields. The cries of the complainant in this case brought an irrigation headman to her rescue. The assailant escaped without having done any harm. She was taken first to the arachchi, and then to the police station, where she formally made a complaint which was duly entered in the information book. When she had finished it, and while the statement of the irrigation headman and arachchi were being taken, the other young woman appeared at the station. She had yielded to the desires of her assailant, who had finally abandoned her on the roadside, whence she made her way to the station. She thereupon without hearing what had been said by the first young woman made her own statement. It was very material to ascertain in this case, as in all such cases, whether in fact there was forcible abduction, or whether the complainant yielded to overtures, and only made a charge because she was surprised by the irrigation headman into whose garden she had been in fact taken.

The complaints of these women obviously come within the terms of section 157 of the Evidence Ordinance. They were written statements relating to the fact at or about the time when the fact took place, and, moreover, they were made before an authority legally competent to investigate the fact. But it appears to have been recognized that this section must be read as subject to the particular enactments of chapter XII. of the Criminal Procedure Code, which was enacted after the passing of the Evidence Ordinance.

Section 122 of that chapter provides that when a police officer is making an inquiry under that chapter, he may examine orally any person supposed to be acquainted with the facts, and shall reduce into writing any statement made by the person so examined. This statement, or a copy of it, must be recorded in the information book. A person so examined is bound to answer truly all questions put to him. But the section then proceeds to enact that no statement so made shall be used otherwise than—

(*a*) "To prove that a witness made a different statement at a different time, *or*

(*b*) To refresh the memory of the person recording it."

A difficulty has, from time to time, arisen with regard to the words "to refresh the memory of the person recording it." These words have always seemed to me to imply that an officer recording such a statement may (where the law allows it, *e.g.*, under section 157 of the Evidence Ordinance) give oral evidence as to the terms of that statement, but may not put in the written statement itself. He may only use that statement to refresh his memory, though, of course, counsel for the defence may call for a statement so used under section 161 of the Evidence Ordinance.

1924.

BERTRAM C.J.

The King v. Pabilis

In this case the question arose whether, assuming that I have correctly interpreted the provision just discussed, the two statements made by the young women came within the terms of the sub-section thus interpreted ; *i.e.*, whether the prosecution was precluded from putting in these statements, and whether the officer giving evidence with regard to them, could only use them for the purpose of refreshing his memory.

I ruled that a spontaneous complaint made at the police station to a police officer by an aggrieved person, though it may become the foundation of an investigation under chapter XII., is not itself to be regarded as a statement made by a person examined orally under section 122, and that, consequently, this complaint having been reduced to writing, the written statement may be given in evidence under section 157 of the Evidence Ordinance independently of any restrictions which may be supposed to be prescribed by section 122, sub-section (3), of the Criminal Procedure Code. In the present case counsel for the defence raised no objection to the full statements of the complaints being put in, but as the question whether this may legitimately be done, from time to time arises, I have referred that question for an authoritative decision.

Akbar, A.S.-G. (with him *Barber, C.C.*, and *R. F. Dias, C.C.*), for the Crown.

June 2, 1924. BERTRAM C.J.

We are all agreed that the ruling given in this case was correct. There was a clear distinction between the initial voluntary complaint made to an officer under section 121, reduced to writing and signed by the informant, and another subsequent statement which may be made in the course of an investigation conducted by the officer on the basis of the original complaint. Whatever may be the restrictions imposed by section 122 upon the use of statements made in the course of the investigation, and we are not to be taken as giving any ruling upon the question of those restrictions, they do not apply to the original voluntary complaint. There is no occasion to make any order with reference to the conviction, except formally to confirm it.

DE SAMPAYO J.—Agreed.

GARVIN A.J.—Agreed.

Conviction confirmed.