

THE KING v. MANIKKA PODI.

D. C., Batticaloa, 2,276.

1903.
May 27.

District Court—Witness—Failure to attend on summons—Power of Court to punish summarily such witness as for contempt of Court—Irregularity.

Per MIDDLETON, J.—It is doubtful whether a District Judge has power to fine a witness for disobedience to a summons of his Court as for a contempt of Court; but if he had that power, it was his duty to have given the witness an opportunity of being heard and to have formally recorded what the offence was of which he was convicted.

IN this criminal case one of the witnesses for the accused who was summoned to give evidence was absent on the day of trial. The District Judge found the witness guilty of contempt of Court and fined him Rs. 25.

He appealed.

Wadsworth, for appellant.—The District Judge had no power to deal summarily with the witness. Form 7 of the Criminal Procedure Code lays down what should be done if the witness was absent. A warrant should be issued for his arrest. The power of the District Judge to punish for contempt of Court is limited by section 59 of the Courts Ordinance. Special jurisdiction is given to punish, by the procedure and with the penalties

1903.
May. 27.

in that behalf by law provided, every offence committed in the presence of the Court, and all acts declared by any law to be punishable as contempts of Court. Disobedience to summons is nowhere declared to be contempt of Court, nor is any procedure or penalty laid down for it. Section 381 says that refusal to produce documents, refusal to take oath, to answer questions, to sign statements, and insult to Judges are contempt of Court. Section 440 says that perjury in open Court is contempt of Court. Disobedience to summons is an offence under the Penal Code (section 172). The procedure adopted by the Judge is irregular. The witness was punished without being called upon to show cause. He is punished on *ex parte* statements.

Rāmanāthan, S.-G.—Section 59 of the Courts Ordinance contemplates not only offences under the Statute Law, but also under Common Law. The power to punish witnesses summarily for not obeying the Court's summons is necessary for the support of its authority, and is possessed by it inherently. This power of punishment, if delayed till the witness is prosecuted in the Police Court under section 172, will not help the District Court to carry on the administration of justice in due course. [Middleton, J.—Has not this point been raised before?] Yes. The question whether the District Court could summarily punish disobedience to its lawful orders or process was dealt with, before the Courts Ordinance came into operation, in the case of the application of John Ferguson for a writ of prohibition against the District Judge of Colombo.

27th May, 1903. MIDDLETON, J.—

In this case a witness, the Vanniah of a pattu, was summoned to appear at the District Court and give evidence in a criminal case on the 9th February last. On that day he did not appear, and a warrant was issued for his arrest in default. On the 10th February the Vanniah surrendered himself in Court, and was called upon to explain what the Additional District Judge called his contempt of Court. The Vanniah put in a statement in writing on the 3rd March, alleging that he had never been served with a summons owing to his being absent at a place called Porativu from the 2nd to the 8th February. The District Judge ordered the Fiscal's process server to be examined, and on the 21st February his evidence, taken in the absence of the Vanniah by some one, was submitted to the District Judge. Whoever took that evidence has not much experience in examining witnesses, and it was with much difficulty that I ascertained that it *prima facie* shows that the process server did serve the summons on the 6th

at Kakachiveddi. It seems to me the District Judge should have heard this evidence himself and in the presence of the Vanniah, who alleges he was at Porativu on the 6th. However, upon this statement of the process server made to some one else the District Judge ordered the Vanniah to pay a fine of Rs. 25 for contempt of Court, apparently in his absence and without the opportunity being given to him to be heard to show cause to the Court. No order was apparently drawn up, but the fine was paid and credited to the revenue on the 4th March. On that day there is a note on the record of the District Judge to the effect that, as the Vanniah persisted in denying the receipt of the summons, his position of the 3rd March, in which he alleges he had not been served, was to be treated as a statement that he had "cause to show," and the 12th May was fixed for further inquiry. On the 4th March the Vanniah, by his proctor, filed a petition of appeal against the order to pay Rs. 25, and on this fact being intimated to the Judge by his secretary, he noted that the appeal was premature, and in consequence a further motion was made by the proctor of the Vanniah on the 24th March to forward the motion of appeal to the Supreme Court. This motion was disallowed by the Judge on the 25th, and it was only on a motion made to me in the Supreme Court on the 7th May that the record is furnished to the Supreme Court together with a letter from the Judge purporting to explain the circumstances of the case.

Assuming the District Judge had power to fine a witness for mere disobedience to a summons of his Court on the ground that it was a contempt of Court (see section 59 of the Courts Ordinance of 1889), which I am somewhat inclined to doubt, it is clear that here the accused has had no opportunity of being heard, and that he was, as a matter of fact, condemned behind his back. There is also only the evidence of the process server, upon whose unsatisfactory testimony it was assumed that the summons had been served. Again, there is no formal record drawn up to show what was the offence of which the accused has been convicted, and under or by virtue of what law or authority he was convicted. The Judge says that the appeal was premature, inasmuch as he had vacated his order. The fact remains, however, that it is recorded that the fine was paid into the Treasury, but there is no record to show that it was ever paid out again. In my opinion the proceedings were irregular in law, procedure, and form, and having read what the District Judge has to say and acting in revision, I order that the order fining the witness Rs. 25 for contempt of Court be set on one side and that the fine be returned to him.

1903.

May 27.

MIDDLETON
J.