

1897.
February 18
and 23.

GUNARATNE v. WICKREMANAYAKA.

P. C., Matara, 28,014.

Disobeying direction of law—Positive direction—Ceylon Penal Code, s. 214.

In a prosecution under section 214 of the Ceylon Penal Code the charge ought to set forth the direction of the law that was disobeyed, and such direction of law ought to be distinctly proved. The direction of law must be a positive one, and not the mere general obligation by which every subject is bound not to stifle a prosecution.

THE facts appear in the judgment.

Jayawardena, for appellant.

Cur. adv. vult.

23rd February, 1897. LAWRIE, J.—

The charge was that “ You on the 7th day of November, 1896, at Medawatta, within the jurisdiction of this Court, disobeyed a direction of law, in that you, being a public servant, and having seized an unlicensed gun belonging to Don Barnes Disanayaka, and being bound by law to produce the said gun, did disobey the direction of law and return the said gun to the said Don Barnes.”

It has been ruled in cases cited by Mayne and by Starling in their commentaries on the 217th section of the Indian Penal Code, that the direction of law disobeyed ought to be set forth in the charge, and it must be a positive direction, not the mere general obligation by which every subject is bound not to stifle a prosecution ; consequently the direction of law must be distinctly proved.

Here the Magistrate states that the direction of law is to produce an unlicensed gun, I presume to produce to a Magistrate, but it is not stated where that direction is to be found.

The possession of an unlicensed gun is not *per se* an offence. It is so made by an Ordinance No. 19 of 1869, section 3, and is punishable by a fine not exceeding £2, and by forfeiture of the firearm. I find no authority given to headmen to seize unlicensed guns, nor any direction given to them to produce them before a Court. The procedure seems to be by information, see sections 11 and 12 of the Ordinance.

It is said that the accused demanded and took money with the intent of stifling a prosecution ; if he did, he is punishable under section 210, but that is a separate offence.

All I have to do here is to decide whether the charge and the proof warrant a conviction under section 214. I hold that they do not. I set aside and acquit the accused.