

1955 Present: Sansoni, J., and H. N. G. Fernando, J.

K. D. ABILIAN, Appellant, and K. D. DAVITH SINGHO
et al., Respondents

S. C. 28 (Cr.)—D. C. Avissawella, 6,510

Contempt of Court—Chapter 65 of Civil Procedure Code—Proper procedure—Right of appeal—Courts Ordinance, s. 57—Criminal Procedure Code, ss. 335, 338—Civil Procedure Code, ss. 796, 797, 798—Partition Act, No. 16 of 1951, s. 53.

In an appeal from a conviction for contempt of Court under section 53 of the Partition Act—

Held, (i) that section 335 of the Criminal Procedure Code does not apply in the case of an appeal under section 798 of the Civil Procedure Code.

(ii) that a person cannot be convicted of contempt of Court under the provisions of Chapter 65 of the Civil Procedure Code on the basis of the answers given by him in the course of an interrogation by the Judge.

APPEAL from a judgment of the District Court, Avissawella.

H. W. Tambiah, with *V. P. Weerasinghe* and *H. L. de Silva*, for the 1st defendant-appellant.

S. J. Kadirgumar, with *P. Somatilakam*, for the plaintiff-respondent.

Cur. adv. vult.

September 13, 1955. H. N. G. FERNANDO, J.—

The appellant has been convicted of the offence of contempt of Court on the ground that, after a Fiscal's officer had given symbolic possession of a land to the plaintiff in execution of a partition decree, the appellant (a defendant in the partition action) refused to give up physical possession of the land to the plaintiff and also tapped the rubber trees and plucked coconuts on the land. The learned District Judge purported to act under section 53 of the Partition Act, No. 16 of 1951, which enacts a new provision empowering the Court to punish as for a contempt persons guilty of disobedience, resistance or obstruction of the description specified in

the section ; it is not necessary for the purposes of this appeal to consider whether the conduct of the appellant falls within the specified description, and I shall assume that the section was applicable.

In the absence of specific provision in the Act as to the procedure to be followed in cases falling under section 53, the learned Judge rightly decided that the provisions of Chapter 65 of the Civil Procedure Code would apply. Section 57 of the Courts Ordinance confers on a District Court a special jurisdiction to punish *inter alia* offences “declared by any law to be punishable as contempts of Court”, and section 53 of the Partition Act is but one instance of a law contemplated in the Courts Ordinance. Hence the procedure in the case of offences declared by section 53 of the Act would be the procedure “in that behalf by law provided”, namely Chapter 65 of the Code.

The learned Judge sentenced the appellant to two weeks simple imprisonment. The preliminary objection has been taken that, having regard to the sentence imposed, leave of Court was necessary as required by section 335 of the Criminal Procedure Code. It was argued that this requirement applied, because section 798 of the Civil Procedure Code provides that the procedure in an appeal from a conviction for contempt shall “follow the procedure laid down in the Criminal Procedure Code regulating appeals from orders made in the ordinary criminal jurisdiction”. I do not think that the argument is sound. In the first place, section 798 confers a right of appeal “from every order, sentence or conviction” for contempt ; and it is at least doubtful whether this apparently absolute right of appeal is limited by any qualifying provision in the Criminal Procedure Code. Moreover, it is only the *procedure* laid down in the Criminal Procedure Code regulating appeals, that is declared to be applicable ; but the limitations in section 335 (though contained in a code of procedure) are substantive restrictions of the right of appeal conferred by section 338 and are not merely procedural. I would therefore hold that section 335 of the Criminal Procedure Code does not apply in the case of an appeal under section 798 of the Civil Procedure Code.

The procedure prescribed by Chapter 65 of the Code requires the Court to commence the hearing by asking the accused person whether or not he admits the truth of the charge ; this the learned Judge failed to do in the present case. Even if that failure does not invalidate the conviction, there was a more serious irregularity in the proceedings. After recording evidence in support of the charge against the appellant, the learned Judge “called upon him” for his statement if any. Thereafter the Judge questioned the appellant and recorded his answers. The appellant was also permitted to be cross-examined. The order convicting the appellant was based to an appreciable extent on the answers given by him in the course of this interrogation by the Judge.

Section 797 contemplates that the Court will hear the accused person’s explanations, but that obviously would mean hearing an explanation voluntarily given ; the section cannot be construed as authorising the procedure which the learned Judge has adopted in this case.

I would accordingly set aside the conviction and sentence and acquit the accused.