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Perjury.

Four men were indicted before Hutchinson C. J. and an English-speaking jury in March 1910, at Jaffna, in case No 3 of the Criminal Sessions held there on that date. The charge was under Penal Code 480 and 482, that they had "made and published" certain defamatory songs. The alleged defamation was contained in 48 stanzas covering 8 pages of a pamphlet. One Chinniah, a person claiming to possess powers over unclean spirits and to have occult knowledge of things not known to others deposed the following facts:

1. 3rd Accused told him of the composition of the songs.
2. A printer Velupillai informed them that he was in possession of the manuscript of the verses.
3. He proceeded to Velupillai's house and saw the manuscript.
4. He and one Canagasabai went to Velupillai's house and saw the manuscript.
5. The manuscript contained 48 stanzas, but the signature of the author was wanting.
6. Velupillai subsequently discovered the signature and sent a post-card intimating him of the discovery.

The following facts and dates are relevant.

(1) Date of alleged defamation October 1908.

(2) Velupillai's 1st information to Chinniah Oct. 1908.

(3) Manuscript shown by Velupillai to Chinniah Oct. 1908.

(4) Post-card from Velupillai to Chinniah Oct. 1908.

(5) Sanction to prosecute Febr. 17, 1909.

(6) Proceedings begun March 17, 1909.

(7) Complainant gave evidence April 21, 1909.

(8) Chinniah gave evidence April 23, 1909 when he stated *for the first time that Velupillai had shown him the manuscript.*

(9) Summons to Velupillai *April 23, 1909.*

(10) Chinniah and Canagasabai visit Velupillai *April 24th 1909*, and the manuscript is said to have been shown by Velupillai to the two.

(11) Velupillai gave evidence April 28, 1909 and denied showing the manuscript and said that Chinniah asked him to support the evidence he had given on the previous day.

The facts very striking with the above dates in view are that *Chinniah before the institution of the case does not appear to have informed the complainant of the discovery of the manuscript, that no search warrant was asked for or obtained to secure the manuscript alleged to be in the possession of Velupillai, that for many months Chinniah kept the secret of his precious discovery all to himself and that Chinniah on his visit to Velupillai in April 1909 asked no question as to the discovery all referred to in the post-card.* Not withstanding the evidence given by Velupillai at the defamation inquiry—that no manuscript was shown by him to anybody—his name appeared on the back of the defamation indictment as the prosecution witness, and he was actually examined at the trial in the Sessions Court on the 10th of March 1910. Velupillai repeated his Police Court evidence, and Chinniah and Kanagasabai deposed that Velupillai had not only shown them the manuscript but also had told them that two of the accused had brought the manuscript to him to be printed. If the evidence of Chinniah and Kanagasabai (a Colombo broker) were true, and believed to be true by the jury which tried the defamation case the accused would have been convicted. They were *all acquitted, as undoubtedly the evidence of Velupillai was received as true.*

It is possible that those who had counted upon securing a conviction of the alleged defamers were grievously disappointed and even looked upon the verdict as a gross miscarriage of justice.

It is significant that Velupillai whose evidence wrecked the defamation case was not summarily dealt with for perjury by the learned judge who presided at the Sessions, nor indicted before that jury which tried the defamation case. If this was due to the impression that a conviction before that jury was not easy to secure, then there is something really very vengeful in the circumstance that Velupillai should have been put on his trial before another jury, six months thence, in the hope that he would be convicted. He was not given the benefit of the opinion formed of his evidence by the defamation jury, nor was he permitted to rest upon the fact that Chinniah and Canagasabai had been virtually discredited by seven of their countrymen. A prosecution of either of them for perjury would have been far more consonant to the verdict than the indictment of Velupillai upon their once discredited testimony.

Velupillai was put on his trial for perjury on July 6, 1910, before Hutchinson C. J. and an English-speaking jury, upon a very elastic indictment:

That being bound by an oath to state the truth intentionally gave false evidence by knowingly and falsely stating "It is not true that I produced any manuscript to Canagasabai or Chinniah not a word was said about any manuscript" (meaning thereby that you did not produce any manuscript to one Swaminadapillai Canagasabai or to one Arumugam Chinniah pillai, and that no mention was made at all about any manuscript on or about the 24th April, 1909, at your office at Vasalulan *or anywhere*.

Whereas in truth and in fact you did produce a manuscript to the said Swaminadapillai Canagasabai and Arumugam Chinniahpillai and mention was made about a manuscript, and that you have thereby committed an offence punishable under Section 190 of the Ceylon Penal Code.

Against the prisoner Chinniah and Canagasabai gave evidence saying the same things they had unsuccessfully maintained before another jury. The prisoner called on his behalf a highly respectable man, a native physician, to prove that Chinniah had confessed to him that the manuscript was not shown to him and Canagasabai in April 1909. In view of that evidence a charge against the prisoner was one beset with doubt, but he was convicted and sentenced to two years' imprisonment and to pay a fine of Rs 1000. An odd ending of an odd prosecution was the recommendation of the jury that the prisoner should be dealt with mercifully "by reason of the surrounding circumstances." During the same sessions a woman who had given false evidence in respect of a counterfeit note was fined Rs 250, and a girl of 14 who had contradicted her Police Court depositions was given two years' rigorous imprisonment.

Civil Action notwithstanding Criminal Verdict.

Bai Appu Bass of Hatton charged Charles de Silva of the same place in the Police Court of Hatton with having caused hurt to him with a cutting instrument. The accused was acquitted. The plaintiff filed in the District Court of Nuwara Eliya Case No. 19338 claiming Rs. 2000 as damages by reason of the injuries in respect of which the defendant had been acquitted. At the trial of the action one of the issues framed was, 'Did the defendant wilfully and wrongfully cut the plaintiff?" The defendant's proctor pleaded the acquittal in the Police Court in bar of the civil action. The learned district judge (Mr. R. G. Saunders) upheld the objection and dismissed the action. His judgment was as follows.

The facts of this case are somewhat peculiar; the plaintiff originally charged the defendant criminally in the Police Court with cutting him—the defendant was acquitted by the Magistrate and no appeal was taken against the acquittal. On certain reasons, as I understand from what has been said by counsel, given in the judgment by the Magistrate when acquitting the accused (the defendant in this case), the Police charged the complt: (the plaintiff in this case) under section 180 C.P.C. and after trial in the D.C. Kandy the plaintiff was acquitted. The plaintiff now brings this action for damages and practically asks me, for that will be the result of the first issue if given in his favour, to say that the judgment of the Police Magistrate was wrong and that the accused (the defendant in this case) did in fact wilfully and wrongfully cut the plaintiff (the complt: in the P.C. case). The counsel for plaintiff objected to my seeing the P.C. or D.C. proceedings between the parties holding that having no knowledge of the previous facts I was therefore in a better and an independent position to decide whether the defendant did actually stab the plaintiff; and I therefore do not know on what grounds the D.J. Kandy acquitted plaintiff of what practically amounted to bringing a false case, but it is obvious that on whatever grounds the D. J. Kandy may have acquitted plaintiff it would not affect the decision of the Magistrate in acquitting defendant when originally charged criminally—I am virtually asked now to go into and find as guilty a man who has been acquitted and declared not guilty, and in spite of all that Mr. Liesching has argued, I do not see that, although brought under the guise of a civil action, this is a question I can now go into. It appears to me that if an action of this kind is permittted, no accused person who has once been acquitted is "safe" apart from the punishment, for of course any decision I might arrive at in this case could not render the defendant liable for punishment in the case in which he has been acquitted. I am none the less asked in this case to declare defendant guilty of an offence of which he has been declared innocent. There is no other way of looking at it. it is not as if the Magistrate having declared that accused was not wilfully and wrongfully guilty of cutting plaintiff, acquitted him on those charges and that plaintiff now brought a civil

action for the injuries alleging that although the Magistrate held they were not wrongfully or wilfully caused still they were due to some negligence or neglect on the part of defendant, such an action would be perfectly "good" but what I am asked in para (2) of the plaint *i. e.* issue (1) on which all the other issues hang, is to declare that defendant did wilfully and wrongfully cut the plaintiff, an act for which defendant has already been acquitted and against which acquittal there has been no appeal. I cannot but feel that it is not competent for me to go into this question even in a civil action and I hold with Mr. Van Rooyen, I am precluded from doing so. As regards Mr Liesching's contention that this objection was not raised in the answer it struck me before I had heard Mr. Van Rooyen on the point and before issues were framed. With every respect to the learned Counsel who drew up the answer I am surprised it was not raised, but the mere fact that such was not done does not I presume preclude me from deciding whether I consider that I have certain authority to decide a matter or not. In this case I hold that the decision of the Magistrate in the P. C. case precludes my going into the question raised in the first issue and that as pliantiff's case rests solely on the first issue I have no alternative except to dismiss his action.

This judgment was set aside and the case remitted for trial on July 12, 1910, on the authority of section 92 of Ordinance No 1 of 1889.

It may be added that a criminal verdict is not a judgment in rem (*R.* v. *Ramalingam*, 2 N. L. R. 49) and it is the duty of the civil court to ascertain for itself the facts averred and express its finding upon them. Reference may be made to *R* v. *Ghose* (I. L. R. 6 Calcutta 247), *Doctor* vs *Samurrideen* (12 W. R. 477), *Lal* v. *Ram* (I. L. R. 4 Allahabad 97). The record of the criminal case is itself not evidence in the civil case (Morgan's digest, sec 603, *Negoi* v. *Negoi* S. W. R. 27. *Yates* v. *Taylor* L. J. Feb 25,1899. See *Mrs. Maybrick's case* 61 L. J. Q. B. 128). The remarks of Berwick D. J. in *Gould* v. *Ferguson* (Browne's Rep vol I, App D. pp. xx. xxi. may be quoted here.

The plaintiff desired virtually to have a case in which he had been convicted of forgery tried over again in this Court in the hope of a virtual reversal of that conviction and to establish his innocence of the crime of which he had been so convicted. But I was, and am, of opinion and ruled that whatever the consequence of a conviction for crime in a Criminal Court may be outside the bounds of a particular Civil suit in which the convict's guilt happened to come in question, *the record of such conviction is not evidence of his guilt for the purpose of the civil suit*, and that consequently the defendant having adduced no evidence (for the purpose of the Civil Case) that he had committed any act of forgery, the plaintiff could not be allowed to adduce evidence having for its purpose to prove that he had not committed such an act. The proof adduced by the defendants by the record of the trial in the Supreme Court showed that plaintiff had been convicted of forgery *but was not admissible to hew* and was not put in for the purpose of shewing *that he had in act committed forgery*.

Sawers's Digest:

History of the Printed Copy.

The Editor, Ceylon Law Review.

SIR,—With reference to F. A. H's contribution under the above heading I quote the following from MODDER'S KANDYAN LAW preface, p. vii, *in notis :*

" Presumably in 1860, for no year is given in the title page or in any other part of the book, was published SAWERS' Digest of the Kandyan Law with an appendix containing orders of the Supreme Court in cases decided in appeal bearing on the Kandyan Law from 1851 to 1860. James Campbell, Printer, Hultsdorp Press. . . . Mr. Ælian Ondaatje, Proctor of the District Court, Kandy, published in October 1900, what he has chosen to call a "third edition" of SAWERS' Digest of the Kandyan Law and states in his preface : "There seems to have been two previous editions of this work. The late Mr. Austin in his " Appeal Reports " published in 1862 makes reference to 'the last or second edition of Sawers' Digest printed by Mr. Campbell of Hultsdorp, Colombo'. The difficulty of obtaining a copy of Sawers' Digest * * * has been the reason for this third edition. The present is a copy of the 2nd edition, the text of which I have carefully followed" . . . The present writer has made diligent enquiry but has not been able to obtain any information with regard to the alleged first edition. Was there really one or could Mr. Austin on whose sole statement Mr. Ondaatje depends for his authority have treated the reproduction of SAWERS' Digest in MARSHALL'S Judgments as a first edition and for that reason referred to Campbell's edition as "the last or second" ?——Mr. Ondaatje has fallen into an error in spelling the author's name. It is *Sawers* not Sawer."

Mr. Campbell (I believe his full name was James Duncan Campbell) had a printing press at Hultsdorp and he was proprietor and manager of the establishment. He died many years ago leaving a son who rejoices in the same Christian names as his father and I believe is yet alive.

I have an idea that a copy of Sawers' Notes as well as D'Oyley's Notes in MSS. is to be had at the Colombo Museum Library. More anon.

I am, Yours faithfully,

EARLE MODDER.

"The Ides"
Kurunegala, July 5, 1910.