THE

APPEAL REPORTS,

FOR 1873,

BEING

REPORTS OF CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF CEYLON

SITTING IN APPEAL.

EDITED BY

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ADVOCATE.

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PART I.—POLICE COURTS.

PART II.—COURTS OF REQUESTS.

PART. III.—DISTRICT COURTS.

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1874.

ADVERTISEMENT.

In presenting the Profession with the Second Volume of my Appeal Reports in a complete form, I have to apologise for the non-publication of Parts II and III of the First Volume, and to explain that the extreme difficulty of carrying the work through the press, in the midst of my professional engagements, put it out of my power to do more than report current decisions. And even this I have not been able to do without dividing the printing of the quarterly numbers between two press establishments, and resorting to what is technically termed "padding" by occasionally introducing unimportant judgments merely to facilitate the making up of a "form" of so many pages. I hope, however, to be able to avoid much of this inconvenience in the future, and to redeem my promise, in regard to the completion of Volume I, at as early a date as possible.

Meanwhile I have spared no pains to make the Index to the present volume sufficiently full and copious to serve the purposes of a Digest; and I have annexed a Table of Errata which will be found to include the more important errors which have crept into the body of the Reports, despite all my care and attention.

S. GRENIER.

Colombo, March 30th, 1874.

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It is competent for a Magistrate to entertain a charge, under the 19th clause of the Vagrants' Ordinance, for keeping a gaming house, if authorised thereto by the Queen's Advocate. 52

REGISTRATION OF DEATHS.—(*Ordinance* 18 *of* 1867.)

Strict legal proof of the requirements of the 18th clause must be adduced before a party can be convicted of failing to give information of an alleged death to the District Registrar 62

RESISTING POLICE HEADMEN.—(*Ordinance* 11 *of* 1868.)

To support a charge of resistance under clause 165, it should be proved that the complainant was in the execution of some duty imposed by the Ordinance 95

SECURITY TO KEEP THE PEACE.—(*Ordinance* 11 *of* 1868.)

Where the circumstances of a case disclose all the elements of a riot, the defendant, though acting in the assertion of what he believes to be a legal right, is liable to be bound over to keep the peace ... 69, 70

When a Magistrate disbelieves a charge of assault and acquits the defendant, he has no right to demand from the parties security to keep the peace ... — 51

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The violent assertion of a supposed right of way, in a manner likely to occasion a breach of the peace, will render the parties responsible for the act liable to be bound over under clause 223 99

THEFT AND RECEIVING STOLEN PROPERTY.

Where a defendant is not properly charged in the plaint as receiver, the Supreme Court will not set aside the proceedings on a mere technicality, if the Magistrate is satisfied with the sufficiency of the evidence in point of fact 26

In a case of Coffee-stealing, the owner who was resident in Kandy had identified the coffee and bag in question as part of a consignment he had sent down to Colombo. He, however, stated under cross-examination that he had a receipt from Colombo stating that the consignment had reached there correct and that the bags had all been returned in bulk. This being mere hearsay evidence, and the defendants having been unable to point out the persons from whom they had got the coffee and bag, a conviction by the Magistrate was affirmed in appeal; the Supreme Court holding that there was sufficient evidence in the case to go to a jury 28

Where a Magistrate had acquitted an alleged receiver, on the ground that there was no proof that a theft had been committed, the judgment was affirmed in appeal, although the Supreme Court thought a different conclusion might have been come to on the evidence . 35

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THOROUGHFARES ORDINANCE.—(*No.* 10 *of* 1861.)

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The offence of felling timber on Crown land without a license, is in its nature single, and the penalty imposed by the Ordinance must accordingly be taken to be single 111

TOLL.—(*Ordinance* 14 *of* 1867.)

Carts carrying tools and provisions for the use of persons constructing a road, are exempt from toll on a pass from an officer superintending the work, provided the toll-bar is within ten miles from the headquarters of such officer 20, 21

A person who evades toll by causing a box of goods to be removed from a hackery on one side of a toll-bar, and loaded in another hackery on the opposite side, may be indicted either under the 17th or the 19th clause 22

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VAGRANTS.—(*Ordinance* 4 *of* 1841.)

A conviction of several "out-door proctors" on a plaint which charged them with "loafing about the Police Court premises without any ostensible means of subsistence," was set aside in appeal, as there was no evidence that the defendants were "wandering abroad" or were "lodging" in any verandah or other place mentioned in the Ordinance. 27

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Where a person is convicted of being an "incorrigible rogue," the Magistrate is not bound to award corporal punishment, but the Court may, in addition to passing a sentence of imprisonment at hard labor, require the defendant, under clause 6, to find security for good behaviour for a year. 32, 38

The practice of administering charms in order to effect a cure cannot be regarded as unlawful or punishable under the Vagrant Ordinance 87

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In *P. C. Galle*, 82759, read "*their* employment" for "*whose* employment" in the 14th line from bottom	12.
In *P. C. Matale*, 3172, read "*two hours*" for "*tied and bound*" in the 6th line from top	33.

PART II.

In *C. R. Panadure*, 14635, read "*defendant*" for "*plaintiff*" in the 7th line, and "*for*" instead of "*against*" in the 2nd line from bottom	1.

PART III.

In *D. C. Kandy*, 54761, read "I do *not* think" for "I do think" in the 7th line from bottom	102.
In *D. C. Galle*, 32979, read "*privity* of contract" for "*priority* of contract" throughout the judgment of the Supreme Court	145.

THE APPEAL REPORTS.

1873.

PART I.—POLICE COURTS.

January 3.

Present GREASY, C. J. and STEWART, J.

Police Assessment tax.

P. C. Kalutara, 47352. The facts of the case were briefly as follows. The Government had, by a Proclamation dated the 28th January, 1869, * established at Bentota, in the Southern Province, a Police Force, the cost of which was met by levying an assessment tax from the inhabitants thereof. In 1871, the Government Agent, W.P., having discovered that the boundaries detailed in the Proclamation took in a little village called Alutgamme, situated in the Western Province, commenced to levy an assessment tax which the villagers refused to pay. Distress warrants were issued to the Modliar of Kalutara who, on proceeding to distrain, was opposed by defendants; and hence the present charge against them, of resisting and obstructing the complainant (the Modliar) in the execution of his duty, in breach of the 77th clause of Ordinance 16 of 1865. The evidence at the trial disclosed, that the Police station was at Bentota, on the southern side of the Bentota Ganga, which ran between Bentota and Alutgamme, and that the Modliar had to send across the river for two policemen to aid him in distraining. It further transpired that several of the inhabitants had petitioned the Government Agent, against the impropriety of recovering the tax, but that no reply had been granted, although the Modliar had reported on the matter. The resistance complained of was initiated by the 1st accused who, having objected to pay, saying "he was not liable to pay for Police of Bentota," shut the door of his house against the Vidahn Aratchy who, by order of the Modliar, was about to enter it to seize some furniture. On the

* "Whereas it is expedient that a Police Force should be established at Bentota in the Southern Province:

"It is therefore hereby proclaimed that, from and after the first day of April next, a Police Force shall be established in the town of Bentota in the said Province, for the effectual protection of person and property, and that the limits of the said town shall be, on the north by the Kalawel Ganga and Madda Ela, on the east by the new Canal and the Bentota Lake, on the south by the Northern boundary of Bandarawatta, and on the west by the sea."

Police arriving, the other accused, with a large crowd, got on the verandah and stood three deep, preventing any access to the house. The Magistrate found all the accused who were identified guilty, and fined the 1st defendant, as the ringleader, in the sum of Rs. 50.

In appeal, the case had been argued on the 11th of September, 1872, by *Grenier*, for the appellant.—The intention, as distinctly expressed in the reciting and the enacting parts of the Proclamation, was to establish a Police force at Bentota in the Southern Province; and the Government Agent of the Western Province had no power to act. The Ordinance most carefully guarded against a clashing of jurisdiction as between one Government Agent and another, (see clause 41;) and a Proclamation specially affecting the *Southern Province* could only be taken to authorise the Government Agent of that province, in view of the sense in which the term "Government Agent" was used throughout the Ordinance. [If the village in question falls within the limits defined as required by the 13th clause, the Proclamation must be regarded as giving both the Government Agents jurisdiction.—C. J.] Accepting that view, there remained the fatal objection that no rate for paying the cost of the Police had been proclaimed with the sanction of the Governor and Executive Council. [Do you contend that two Proclamations were necessary before the tax could be levied?—C. J.] Two distinct Proclamations were required: one to establish the Police, another to define the per centage on assessment (Quotes the 34th clause.) The latter Proclamation was not produced at the trial, nor did it appear to have ever issued.

The *Queen's Advocate*, for the respondent, urged that the objection, if valid, ought to have been taken in the Court below; and that it was too late now to raise it. The clause quoted by his learned friend might be construed to mean that the minimum of six pence per quarter could be levied (as he believed was attempted to be done in the present case) under the authority of the Ordinance, without the intervention of a Proclamation. [I don't think so. It is clear that a Proclamation to fix the percentage is as necessary as one to establish a Police Force. Was such Proclamation ever issued? C. J.] He could not say, but would enquire. [Per CREASY C. J.—Let the case stand over to allow the Queen's Advocate an opportunity to produce the required Proclamation.]

Ferdinands, D. Q. A., on behalf of the Queen's Advocate, having intimated that the Proclamation called for did not exist, judgment was this day pronounced, by STEWART, J., as follows: "Set aside and defendants acquitted. This case has stood over, from time to time, for the Queen's Advocate to produce the Proclamation, if any was ever issued, under the 34th section of Ordinance 16 of 1865, fixing the amount of percentage, on the annual value of houses, to be levied for the maintenance of the Police. The Proclamation produced in evidence by the complainant, only relates to the establishment of a

Police Force within the limits therein mentioned. But to sustain this prosecution, there ought also to have issued a Proclamation fixing the rates to be levied, as required by the 34th section. The Queen's Advocate not being able to refer us to any such Proclamation, and, as far as we are aware, no such Proclamation having ever issued, the conviction must be set aside."

Forcible entry.

P. C. Ratnapura, 13493. This was a charge of forcible entry, under the Proclamation of 1819. The Magistrate convicted the defendants, holding that the complainant had been in possession of the land in question, and that "the defendants had taken away the crop without fighting, simply because no one fought with them." *In appeal, Ferdinands* for the appellant was not called upon. And per CREASY, C. J.—"Set aside. There is no proof here that violence was used or that violence was threatened. The Police Magistrate is quite right in holding that, in order to bring a case within the law against forcible entry, it is not necessary that there should have been an actual fight. If the peaceable possessor yields to the threat of physical force, and thereby avoids it, the case is still one of forcible entry, such as the law will punish. Such a threat need not be by words. It may be by the production or by the brandishing of weapons, or by mere bodily gesture, or by bringing a band of ruffians to the place obviously organised for conflict; but there must be either an actual employment, or an actual menace, of physical violence, before the wrong doers can be properly convicted of forcible entry. And this must be proved. It is not enough to suspect that force or menace would have been used, if the complainant and his friends had been more disposed to cling to their property. In the present case, the complainant certainly says that the accused took his crop forcibly, but that may merely mean that they took it against his will. The word "force" like the latin word "vis," in cases of trespass to land, applies to any act whereby the ideal fence which the law places round each man's property is broken. But in order to punish criminally, there must be proof that the criminal used force equivalent to the *atrox vis* of the Roman Law, which might occur by the threat, as well as by the actual infliction, of physical violence. None of the complainant's witnesses in this case, proves any specific act which can be construed into a threat of the kind. In the case referred to in the Police Magistrate's judgment, as affirmed by the Supreme Court, Ratnapura 10922, there was express proof of threatening with a stick. In order to guard against misapplication of this judgment in future cases, it may be well to add that there may be cases of forcible entry in which no violence is used or threatened to the possessor or his people, but in which there is so much outrage in breaking down walls, fences and the like, or in which so much alarm is caused to the neighbourhood, as to make the wrong doers liable to conviction.. But the present case does not come within either of these classes."

Cruelty to animals.

P. C. Galle, 82377. The defendant was charged, under clause 1 of Ordinance 7 of 1862, with having beaten, ill-treated and killed a cow. The complainant having admitted that the animal had trespassed in the defendant's enclosure, the Magistrate held that no criminal indictment would lie, and dismissed the case. *In appeal*, the judgment was set aside, and a further hearing ordered; and per STEWART, J.—"The Magistrate should not on the mere statement of the complainant, that the animal was trespassing at the time in the defendant's enclosure, have stopped the case without enquiring into the circumstances connected with the alleged cruel ill-treatment of the cow. It will be seen that the Ordinance No. 7 of 1862, under which the charge is laid, unlike the Ordinance No. 6 of 1846, does not make it necessary that the act should be malicious. The fact of the tresspass will, however, no doubt, be a circumstance which it will be proper duty to consider, together with the mode and extent of the ill-usage, in determining whether or not the defendants cruelly ill-treated the animal, in contravention of the Ordinance. We have also to point out, that the case having come on for trial, the complainant should have been examined on oath or affirmation. The examination authorised by the 2nd section of the Ordinance No. 18 of 1871 has reference to a prior stage of the case, before the issue of process to the defendant."

Hearsay evidence.

P. C. Galle, 83447. The defendant was convicted of having stolen a rupee from the almirah of complainant's wife, who however did not give evidence, the husband deposing to facts which she ought to have personally proved. *In appeal*, (*Grenier* for appellant,) the judgment was set aside, and a further hearing ordered, "because some of the most material facts of the case appear in the record to be supported by hearsay evidence only."

Maintenance.

P. C. Matara, 71159. The defendant, who was sued for maintenance on behalf of his illegitimate child, had, after the filing of the plaint, but before the issuing of the summons, tendered to the complainant a rupee. The Magistrate considered this sum sufficient, and entered a verdict of not guilty. *In appeal*, (*Grenier* for respondent,) the judgment was set aside; and per CREASY, C. J.—"Judgment of guilty to be entered with a fine of 12½ cents, and the defendant to pay the complainant the costs of entering the plaint. The offence was complete at the time when the suit was instituted. The subsequent tender of sufficient maintenance money cannot annul the guilt, though it may properly reduce the punishment."

Servants.

P. C. Mannar, 3873. Held that tappal runners, employed under a contract, were servants within the meaning of the Labor Ordinance.

Defective plaint.

P. C. Matara, 71073. The defendant, who was complainant's horsekeeper, was charged with having fraudulently demanded, received and appropriated Rs. 11, which was due to complainant from a third party as carriage hire. The Magistrate dismissed the case, holding that the plaint disclosed no offence which he had jurisdiction to try. *In appeal*, the finding was affirmed.

Timber Ordinance.

P. C. Panadure, 20037. The defendant was charged, under clause 8 of Ordinance 24 of 1848, with having removed two carts-load of Lunomedelle planks, without a permit. The Magistrate, having relied on the authority quoted for the defence from Thompson, p. 78, as shewing that the timber in question did not fall within the Ordinance, acquitted the defendant. *In appeal, (Brito* for the respondent,) the judgment was set aside and case remanded for further hearing and consideration; and per STEWART, J.—"The case cited in Mr. Justice Thompson's book, in page 78, is inaccurately quoted. In that case, the Supreme Court held that large timber cut for such marketable purposes as staves, etc., does not fall within the exception in the 15th clause of the Ordinance 24 of 1848. An accurate copy of this judgment is hereto appended.* At the further hearing, fuller enquiry should be made as to the size, quality and uses of the Lunomedelle tree, so as to enable the Court to determine whether this tree can properly be deemed a valuable description of timber tree within the meaning of the Ordinance."

January 9.

Present CREASY, C. J. and STEWART, J.

Arrack Ordinance.

P. C. Gampola, 23842. This was a charge, under the 26th clause of the Arrack Ordinance, for selling less than a gallon of arrack at Rs. 4, the authorized price for a gallon being only Rs. 2·56. The defendant, who was a retail arrack dealer, delivered five quart bottles which he represented as containing a gallon; but on the arrival of the Police at the shop, he tendered another bottle and the balance money to complainant. Magistrate (*Neville*) fined the defendant Rs. 20, and ordered that the arrack should be confiscated. *In appeal,*

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* *P. C Avishawella*, 4642. Per CURIAM.—"That the judgment of the said Police Court of the 19th November, 1852, should be set aside, and the same is hereby set aside accordingly; and the case is remanded for re-hearing, and to give judgment de novo. The Assessors state that trees of the description mentioned in the charge would, if large, not be cut down for firewood, and that they are used for temporary buildings, coffins and coffee casks. As there is a great demand for staves for coffee casks, they were probably cut for the latter, and the Court does not consider that large timber cut for such marketable purposes could be considered to fall under the exception in the 5th clause of the Ordinance No. 24 of 1848."—Civil Minutes, 18th December, 1852.

per STEWART, J.—"The judgment is altered, in so far as respects the confiscation of the arrack, which part of the judgment is set aside; in other respects it is affirmed. The Ordinance No. 10 of 1844 does not authorize the confiscation of the arrack, under the circumstances stated in the charge."

Brothel-keepers.

P. C. Galle, 83550. The plaint was as follows: "that the defendant did, between the 18th and 31st December, and on divers other times and seasons, between that and this day, in Talbot town in Galle, have and occupy and keep and maintain a common, ill-governed and disorderly house; and in the said house, for the lucre and gain of him the said defendant, did cause and procure certain persons, male and female, of ill-fame and dishonest conversation, there to meet, frequent and come together; and the said persons, in the said house, at unlawful times, as well at night as in the day, to remain tippling, whoring and misbehaving themselves, did permit, to the great damage and common nuisance of all the liege subjects of our Lady the Queen there inhabiting, and against the peace of our Lady the Queen, her Crown and dignity." It appeared that the defendant had attended Court as a witness, and, on being asked, while giving evidence, what his occupation was, stated (before the Magistrate could give him any warning) that he was the keeper of a bawdy house. He was thereupon immediately prosecuted by an Inspector of Police, who happened to be present; and, having pleaded guilty to the charge, without applying for a postponement in the absence of a summons, he was sentenced to three months' imprisonment at hard labor. *In appeal*, the defendant by petition urged "that the charge preferred against him was not cognizable by the Police Court, and did not disclose an offence under any statute or common law in the Colony."

Grenier, for the appellant, would not question the law of the case, but relied for a reversal on the ground of jurisdiction. The old Vagrant Ordinance, 3 of 1840, had specially provided a sentence of 6 months' hard labor and a fine of £5 on the first conviction, and double that punishment on the second conviction, of every keeper of a brothel or disorderly house. The Ordinance 4 of 1841, which repealed 3 of 1840, did not re-enact that provision, and hence the charge being laid under the common law; but, in view of what had once been the recognised penalties for the offence, the prosecution should have been conducted in a superior Court. Besides, as this was a public nuisance, the Queen's Advocate ought to have taken the initiative as had been done in *Newman's* case.

Sed per CURIAM.—Affirmed.

January 14.

Present CREASY, C. J.

Servants.

P. C. Galle, 83566. This was a charge against a servant, under clause 11 of Ordinance 11 of 1865, for quitting complainant's service,

without reasonable cause and without having given due notice. The defendant, who was an Ayah, appeared to have obtained leave to visit a former mistress: she went, but never returned. In defence, she stated that she had gone because her child was ill. The Magistrate found her guilty, and sentenced her to seven days' imprisonment. *In appeal*, the judgment was affirmed; and per *Creasy*, C. J.—"The appellant, at the trial, told a story inconsistent with the story by means of which she obtained temporary leave of absence from her employer. Neither story is proved. The fact that she had previously sent away her clothes, shows that she intended to desert the service entirely. A complete desertion cannot be justified, in law or in common sense, by a permission for temporary absence, especially where that permission has been fraudulently obtained."

Timber Ordinance.

P. C. Urugalla, 3919. The defendant was charged with having cut timber, on a Crown Forest, without a licence, in breach of the 5th clause of Ordinance 24 of 1848 and 2nd clause of Ordinance 4 of 1864. The Magistrate, having declared himself dissatisfied with the evidence, as to the land not being private property, entered a verdict of not guilty, and referred complainant to a civil action. *In appeal*, per CREASY, C. J.—"Set aside. Judgment of guilty to be entered, and defendant to be sentenced to pay a fine of Rs. 40. The Police Magistrate has wholly overlooked the provisions in clause 12 of Ordinance 24 of 1848, which throw on the defendant the burden of proof as to the land not being Crown land."

Gambling.

P. C. Matale, 2668. Defendants were charged with having gambled with dice "at Konakoloyoda in a jungle." The magistrate held that "there was no proof that the offence had been committed in a public or open place which could be seen from the road," and acquitted the defendants. *In appeal*, per CREASY, C. J.—"Set aside, and case sent back for the Police Magistrate to pass sentence on the 1st, 5th, and 6th defendants, who have pleaded guilty, and for further hearing as to the others. The complainant should adduce further evidence, if he has any, of previous gambling by any parties in or near to the same place. See the statement in 1st witness' evidence, that people gamble in that jungle and that they go from place to place in the same jungle. If no such evidence is forthcoming, the acquittal of the prisoners who have pleaded not guilty will be right."

Servants.

P. C. Batticaloa, 5476. The plaint, as filed on the 30th November, 1872, was "that the defendants did, during the months of June and October, namely the 1st, 2nd, 3rd, 4th and 6th in October, and the 5th in June, 1872, wilfully refuse and neglect to work under the

complainant, in Rockwood Estate, after agreeing to do so, against the 11th clause of Ordinance 11 of 1865." On the 6th of December, the defendants being absent, the complainant obtained a warrant against the 1st and 4th, withdrawing the charge as against the others. On the 19th of December, (to which day the case had been postponed) the following order was made by the Magistrate: "Warrant not taken out by complainant. He asks for time to do so. Struck off. Complainant referred to a civil action." *In appeal*, per CREASY, C. J. —"Appeal dismissed, except so far as regards the order referring the complainant to a civil action, which is declared to be null and void. After the delay of complainant in taking out the warrant, the Police Magistrate was justified in not repeating his order for a warrant. His order referring the complainant to a civil case was an assumption of authority not possessed by him. It may be observed, that the present plaint is substantially defective."

January 23.

Present CREASY, C. J.

Prostitutes. *P. C. Colombo*, 5292. On the information of Mr. Sutton, Inspector of Police, that the defendants were common prostitutes at Wolfendahl Street, the usual notice for attendance, prescribed by the Contagious Diseases Ordinance of 1867, issued from the Police Court. On the day of trial, the accused appeared by a Proctor and pleaded not guilty. They were, however, convicted, and an order was made subjecting them to a periodical medical examination by a visiting Surgeon. *In appeal, Coomaraswamy*, for the defendants, contended that the due service of the notice on the accused, who were absent at the investigation, not having been verified on oath, as required by the 7th clause of the Ordinance, the order of the Magistrate was irregular. But the judgment was affirmed, the Chief Justice remarking that the accused, having been represented by a Proctor, were bound by the adjudication.

Jurisdiction. *P. C. Galle*, 83102. The defendant was charged with having assaulted and wounded the complainant with a club. The evidence disclosed that the complainant had been struck on the head, that she had fallen senseless, had bled much, and had been in hospital for several days under medical treatment. The assault appeared to have been committed in the course of a dispute as to some plantain trees, growing on a land the title to which was in question between the parties. The defendant was acquitted. *In appeal*, the judgment was set aside, and the case sent back for proceedings to be taken before the Justice of the Peace, under clause 103 of Ordinance

11 of 1868. And per CREASY, C. J.—"The case was beyond the Police Magistrate's jurisdiction. The Supreme Court does not either generally take or sustain that objection on behalf of defendants, unless it has been made at the hearing before the Police Magistrate; and it is an objection not usually to be listened to on behalf of a complainant. But this may properly be regarded as an exceptional case. The appellant is evidently a woman in humble station, without professional advice. The delay and difficulty in getting the 1st defendant before the Police Magistrate are suspicious, and unless there is a further investigation of this case, we may be suffering a serious offence to be passed over without any effectual trial."

January 28.

Present CREASY, C. J. and STEWART, J.

Forcible removal.

P. C. Colombo, A. The charge in this case was "that the defendant did, on the 13th of January, at Morotuwa, unlawfully enter into the cinnamon garden of Juse Silva, in charge of complainant, and forcibly take away a bullock which had been seized and detained there for trespass." The Magistrate rejected the plaint, holding that it disclosed no offence. *In appeal*, the order was affirmed; and per CREASY, C. J.—"No criminal offence is sufficiently stated. The word 'forcibly' may mean no more than the breach of the ideal fence, which the law assumes to protect all property. Neither is it made to appear that the defendant rescued goods from the actual custody of the law. See R. v. Bradshaw, 7 C & P, 233."

February 4.

Present CREASY, C. J. and STEWART, J.

Cruelty to animals.

P. C. Matale, 71183. The defendants were charged, under clause 1 of Ordinance 7 of 1862, with having cut and injured a cow, the property of the complainant. The eye-witness in the case stated, "I know the cow. I saw 1st defendant cut it. This was two months ago. The animal was in the defendant's land. I could not make out whether the land was planted." The complainant, who was the headsman, deposed that the cow had a cut on the hind leg near the hip, and that it had cost him ten rupees to have the animal doctored. The Magistrate held as follows: "This is a matter for a civil remedy, if true. Accused are discharged." *In appeal*, the judgment was affirmed; and per STEWART, J.—"No cruelty was proved within the meaning of the Ordinance referred to in the plaint."

Proceedings quashed.

P. C. Galle, 83681. The plaint in this case was identical with the one in No. 83447, reported in page 4, excepting that the complainant on the record was the wife instead of the husband. The Magistrate, having found the defendant guilty, recorded the same sentence as before, of six weeks' hard labor. *In appeal*, (*Grenier* for appellant,) the proceedings were quashed for irregularity; and per STEWART, J.—"The charge in this case is for the identical offence of which the defendant was accused in the case 83447. The conviction was set aside by the Supreme Court, and the case sent back for further hearing. That case is consequently still pending, and ought to be proceeded with. The case was sent back, not for a new plaint to be prepared, but for the same charge to be further heard; and the Supreme Court desires that that may be done accordingly."

Butcher's Ordinance.

P. C. Panadure, 20498. The defendant was charged with having slaughtered a bullock at Morotomulle, within the Police limits of Morotto, without a license, in breach of clause 13 of Ordinance 14 of 1859. The defendant appeared to have obtained a license from the headman of an adjoining village, but in doing so, the Magistrate expressly held, he had not acted bona-fide, and he was accordingly convicted. *In appeal*, the finding was affirmed; and per STEWART, J.—"The defendant is expressly found not to have acted bona-fide. This case is therefore different from the Colombo Police Court case referred to." (No. 32513, I. *Grenier*, p. 1.)

Assault and Theft.

P. C. Galle, 83604. Two defendants were charged, in one plaint, with assault and theft. The Magistrate having found only the 1st guilty, sentenced him to six weeks' hard labor. *In appeal*, per CREASY, C. J.—"Affirmed, so far as regards the judgment of guilty of assault, but not as to the charge of theft. The acquittal of the 2nd accused shews that the Magistrate must have disbelieved the charge of theft. There was no evidence whatever to fix the crime of theft on the appellant, except his supposed complicity with the 2nd accused and an act of theft by the 2nd accused, which alleged act the Magistrate evidently disbelieved. The punishment given in this case is the ordinary punishment for assault, and there is no need to interfere with the case further on account of it. But it is not a matter of indifference, whether this record stands as a conviction of assault only, or as a conviction of assault and theft. The character of a convicted thief is much more damaged than that of a man who has been merely found guilty of assault."

Timber Ordinance.

P. C. Kandy, 90663. On this case (which is reported in page 19 of Part I, 1872) being reheard in the Police Court, both the defendants and complainant led evidence; and the Magistrate held by his

former finding of "not guilty." *In appeal*, per STEWART, J.—"Affirmed. There is more evidence on the part of the defendants; and the appeal being on a matter of fact, the Supreme Court is precluded from considering whether the Magistrate came to a right or wrong conclusion on the evidence. The question of title to the land is still open for adjudication in a Civil Court."

P. C. Galle, 83198. This was a charge, under the 166th clause of Ordinance 11 of 1868, that defendant had falsely accused complainant, on his solemn affirmation before a Justice of the Peace, with cattle stealing. The Magistrate held that the information was false, but expressed some doubt as to whether defendant had acted with malice. He further held that defendant, having made enquiry before preferring the charge, had arrived at such a knowledge of the circumstances as should have led him, being a reasonable man, not to prefer it; and that, therefore, the defendant should be taken as having made the false charge wilfully, knowing it to be false. A verdict of guilty was accordingly recorded. *In appeal*, (*Grenier* for appellant.) the judgment was affirmed; and per CREASY, C. J.—"The evidence shows that the charge was false, and that it must have been false within the knowledge of the appellant. The appellant, in making his affidavit against the complainant, must have done so with intent to support a false accusation against the complainant. This satisfies the Ordinance under which appellant has been convicted." False information.

February 11.

Present CREASY, C. J. and STEWART, J.

P. C. Matara, 71399. This was a charge laid under the 1st section, 53rd clause of Ordinance 16 of 1865, for furiously driving a hackery. *In appeal*, against a conviction, the judgment was affirmed; and per STEWART, J.—"Affirmed, but the charge ought to have been under the 83rd clause." Furious driving.

P. C. Galle, 82759. The defendant, who was a Dhoby, was charged with gross neglect of duty, under the 11th clause of the Labour Ordinance. He was found guilty, and sentenced to a forfeiture of wages and to imprisonment, without hard labour, for ten days. *In appeal*, *Ferdinands*, for appellant, submitted that the Negombo decision referred to by the Magistrate could not be taken to apply, as it did not appear that the Dhoby who was thereby convicted had worked for more than one employer, as in this case. The words "other like servants" should be construed to mean servants ejusdem generis as "menial" or "domestic" servants, amongst whom it would Dhoby case.

be unreasonable to include a Dhoby, who washed outside his employer's premises and who was the servant of several masters at one and the same time. The judgment, however, was affirmed ; and per CREASY, C. J.—"In this case, the matter for consideration was whether an ordinary Dhoby, employed to do the washing of a household at so much a month, is within the meaning of the Ordinance No. 11 of 1865 respecting servants and labourers. There is a decision of this Court, (Police Court, Negombo—reported at page 9 of Mr. Grenier's Reports), that the Ordinance does apply to such a person. It was stated in the judgment of the Court below, in the present case, that the Negombo decision was in direct opposition to a previous decision of this Court in a Jaffna Police Court case, No. 4273. The Supreme Court thought it desirable to send for the record of the Jaffna case, which has occasioned some delay. It appears that the Jaffna record is not to be found ; but we have been furnished with an extract from the Jaffna Police Court calendar, by which it is shown that the decision in that case was a decision on the old Ordinance No. 5 of 1841, the words of which differ materially from the words of the Ordinance now in question. The 7th clause of the Ordinance of 1841, which imposed certain penalties for misconduct, thus describes the parties liable to be charged under it, 'any menial or domestic servant or laborer or journeyman artificer.' But the Ordinance No. 11 of 1865, by its first clause, describes the persons to be embraced by the word 'servant' as follows :—'The word servant shall, unless otherwise expressly qualified, extend to and include menial, domestic *and other like* servants.' It is the addition of these words 'and other like' which makes all the difference. These words, like all other words in a statute, must not be treated as meaningless, if a reasonable meaning can be assigned to them ; but to hold that no servant can come under the Ordinance, unless he be in all respects a menial or domestic servant, would be to treat those words as meaningless surplusage. We consider them to reasonably mean such servants as, with regard to the nature and mode of whose employment and services, generally resemble menial or domestic servants, but with some circumstances or circumstance of variance, such circumstances or circumstance of variance not being important enough to efface the effect of the general similitude. The regular Dhoby of a household, employed and paid, not for a piece work, but by the month, appears to us to be a person generally resembling the domestic servant of the household. He who collects and washes the dirty linen of the household, and has to bring it back and count it out clean, is employed about the regular and necessary business of the household, just as much as the Appu, who spreads part of the linen, when cleaned, on the table, or the body servant or Ayah, who puts away in the almirahs other linen which the Dhoby has washed. And decidedly the Dhoby's services are not of a higher order than their's are. Having established the general similitude, we

must next look for the features of difference. It may be suggested, that the Dhoby does the main part of his work off the premises. But this seems to us to be a very unimportant matter. The same might be said of an errand boy, habitually sent off the premises. The really differential circumstance appears to be this. An ordinary Dhoby does the washing of several households. But the effect of this variance does not, to our minds, obliterate the effect of the general similitude; and we hold accordingly, both on the reason of the thing and on the authority of the previous decision of this Court in the Negombo case, that a Dhoby, employed as this appellant was, comes within the words 'menial, domestic or other like servants.' It follows that the penalties of the 11th clause apply to him, if guilty of any misconduct which that clause specifies; and this Dhoby has decidedly been so guilty."

Labor Ordinance.

P. C. Galle, 82758. The defendant was convicted of having left complainant's service, without giving due notice, in breach of the 11th clause of Ordinance 11 of 1865. The complainant, in his evidence, stated "defendant was employed by me in the office as lithographing boy. He was paid by the month—Rs. 15 per mensem. He only did the lithographing work." *In appeal*, (*Dias* for appellant) per CREASY, C. J.—"Set aside. The complainant describes the duties of this appellant as follows: 'He was employed by me in the office as lithographing boy.' It seems to the Supreme Court, that it would be a perversion of language to say that a person so employed was a 'menial, domestic or other like servant, or a pioneer, kangany or other labourer.' See the Interpretation clause of Ordinance No. 11 of 1865. To lithograph even letters, requires the exercise of some intellectual ability, as well as of special manual skill. It resembles the duties of a copying Clerk, whom no one would think of punishing under the Servants' and Labourers' Ordinance."

Coolies.

P. C. Gampola, 23847. The plaint was "that the defendants, being servants and kanganies in the employ of Mr. James Ryan of St. Clair Estate, on the 14th day of November, 1872, at Orwell Estate, without reasonable cause, did neglect and refuse to attend at St. Clair Estate, where they had contracted to attend in commencing and carrying on work; wilfully disobeyed the lawful and reasonable orders of their said employer; grossly neglected their duty; and otherwise misconducted themselves in the service of their said employer; in breach of the 11th clause of the Ordinance No. 11 of 1865." The Magistrate (*Neville*) held as follows:

"In this case, complainant, on behalf of his employer Mr. Ryan, sues two kanganies employed under him. Mr. Ryan has two estates, Orwell and St. Clair, in Gampola and Dimbula, res-

pectively. It is contended that defendants being ordered to proceed from the estate in Gampola to that in Dimbulla, and having refused, have subjected themselves to penal consequences for disobeying their employer's reasonable order without cause. The facts to be decided upon become—1. Were defendants generally bound, by the general law of Master and Servant, to transfer their services from Gampola to Dimbulla? 2. Were they generally bound by any special agreement so to transfer their services? If defendants were generally bound to transfer services, question next arises—3. Was this special order reasonable? 4. If otherwise reasonable, did the withholding of their pay justify refusal. The Court holds on the first count. 1. That when one proprietor holds land in two districts, such as Gampola and Dimbula, a labourer engaged for the one, without express stipulation, is not liable to serve on the other. The grounds for this opinion are. 1. It is clear the 25th clause of the Ordinance intends to provide that Estate Coolies are bound to serve the Estate, and the temporary Superintendent or Proprietor is not the owner of their services independently of his office, though the provisions of the Ordinance as to written contracts of service for one year are generally uncomplied with—and service is therefore monthly only;—yet there is no doubt the intention of this Ordinance, under which defendants are prosecuted, was that the service of coolies regularly employed on an Estate should be to the Estate and not to the Superintendent. If defendants were bound to an Estate, it was Orwell in Gampola. 2. Though the defendants are, in absence of a written contract, by literal law bound to the Superintendent, (in this case the Conductor, complainant) for their month's service, yet there can be no doubt they are not bound to perform any duty they had not in a general sense in view when they took service. Thus a man engaging as butler in a city, could not be expected to act in that capacity in the country, against his inclination and merely to suit his master. Neither can a kangany hiring his services for Gampola be held bound to serve in Dimbula, where climate, food, health, society and perhaps perquisites (such as contracts, &c.) are naturally different,—nor could a person, with a family dependent on him, be expected reasonably to leave that family and continue his services elsewhere, when at the time of hiring such separation could not be contemplated. No. 5023 P C. Badulla (Beling and Vanderstraaten's Reports, p. 123) treats of an entirely different case, when estates were only six miles apart, and when a good servant with his master's interest at heart, if he had no special reason for refusal, was clearly in equity bound to further his employer's interes ; since it may be *primâ facie* presumed, none of the reasonable views with which he took service were likely to be infringed. On the second count, the P. C. holds 2. Though complainant and his witnesses endeavour to prove two special agreements between complainant's proprietor and defendants, yet they fail wholly

to prove either to my satisfaction. 1st and 3rd witnesses refer to an understanding and agreement to this special service, from the time of defendants' engagement, but other of complainant's witnesses deny it, and I feel satisfied defendants did not so consent. And as regards the second alleged agreement in November last, the evidence is very weak and contradictory, and I do not believe defendants engaged their services for Dimbula as alleged. On the contrary, much in this evidence leads me to believe they steadily opposed the proposal, and that the coolies whom they did send, when first applied to, were sent under compulsion, since they deserted instantly and without any cause shown or known. Defendants' subsequent conduct also, I think, shows this. They did not desert, but remained on Orwell till after they had been refused any further work there. On the third count, it is held: considering difference of food, climate and society, it was not reasonable to order laborers engaged for work at Gampola to proceed against their will to Dimbula, any more than it would be fair to force house-servants against their will from Colombo to Newera Eliya. Further, besides this reason, in this special case after defendants had forced twenty-four men to go to Dimbula to aid Mr. Ryan, and those men had deserted, it was not reasonable to expect the kanganies, who depend on their gang for a living, to transfer the rest of their men, unless good cause was given why the previous consignment had deserted. 4. By referring to the check roll and pay list, I find it unfortunately kept with pencilled columns of cash advances, totals, &c., allowing of extensive fraud by any dishonest conductor possessed of a piece of Indian-rubber. Further, it appears not only to defendants but to their gangs were due a sum of money exceeding the average of one month's earnings, after deducting advances; and that no settlement was made after 31st July last. The alleged debt bond is not produced, but as regards defendants I hold the withholding the pay of the coolies of a kangany is enough to justify his leaving *with* them, even though his own wages were paid, because he receives a capitation allowance for each of his men, and his livelihood is lost if he loses them. Further, it seems to this Court that the debt bond, even had it been produced, could not have been set off against arrears of wages in this case, unless it is so stipulated in the deed itself. A written deed has certain advantages in civil suits, which once assumed place the debt in an independent position, and on its own merits alone. So that more than a month's pay being due to defendants, they were entitled to leave after 48 hour's notice, which, however, Mr. Ryan's previous order to refuse them work rendered superfluous. For these reasons defendants are acquitted."

In appeal, the judgment was affirmed; and per STEWART, J— "There is not sufficient evidence of general hiring as to scene of work."

February 14.

Present CREASY, C. J.

"Juvenile Offenders."

P. C. Matara, 71121. The defendants having been found guilty of theft, the Court sentenced them, as being "juvenile offenders," to receive twenty strokes with a rattan. From the record, it appeared that the punishment was inflicted in the presence of the Magistrate. *In appeal*, by one of the accused, who pleaded that he was not a "child," and that he had been improperly flogged, the Chief Justice sent the case back, with the following order: "Request the Police Magistrate to look to the petition of appeal and inform the Court whether this offender was a child, and, if so, of about what age. The record at present only states that he was a 'juvenile offender,' which is not necessarily the same thing as a child. Request the Police Magistrate also to inform the Court what jurisdiction he considers himself to have had, beyond that (if any) given by the Ordinance 11 of 1868, see section 108, to order summary punishment to be inflicted on a child on the present charge." The Magistrate's reply having been read this day, the judgment of the Court below was affirmed, and the appeal dismissed, in the following terms. "This defendant has appealed on the grounds of want of evidence, and want of right in the complainant to prosecute him. These grounds are frivolous. The evidence of defendant having been one of the thieves is ample; and the complainant was a legal prosecutor. The defendant further appeals, on the ground that he is not a child, so as to be liable to summary moderate punishment, under clause 108 of Ordinance 11 of 1868. He asserts that he is of the age of 20. He also asserts that the punishment was not moderate, but was inflicted with the greatest severity. The Supreme Court has made careful enquiry into these matters; and the Supreme Court is satisfied that the Police Magistrate had reason to believe *super visum corporis*, that the appellant was a boy of about 14, and that upon enquiry made (very properly) of the boy's father, who was in Court, the father reported him to be only 12 years old. Under these circumstances, the Police Magistrate was naturally unwilling to send a mere lad to prison; and we consider that the infliction of a fine would be no punishment to the lad, and would fall in reality on his father. The Police Magistrate caused him to receive 20 strokes of a rattan, which were inflicted in the Magistrate's presence, over two cloths which the prisoner was wearing. We are convinced that the punishment was moderate. Under these circumstances, all the grounds taken in appeal having proved frivolous or unture, the Supreme Court does not feel called on in this case to base its judgment on other objections to the proceedings, of which no complaint has been made. The appeal is dismissed. But, as a caution in future cases, we point out to the Police Magistrate, that the provision at the end of section 108 of Ordinance 11 of 1868 does not apply to all cases of summary convictions of children, but to cases where the children are convicted under

Ordinances, which, like the Malicious Injuries Ordinance, clause 30, and the Police Force Ordinance, 16 of 1865, clause 99, specially empower the Police Magistrate, before whom any child is convicted under such Ordinance, to order the moderate chastisement of such child, instead of subjecting him to any fine or imprisonment."

Gambling.

P. C. Kandy, 92987. The plaint, as copied verbatim from the record, was "that the defendants were, on the 20th day of December, 1872, at Kandy, parties to playing, betting or gaming at a game on the bagatelle table, in a house kept for the retail of spirits or other liquors, in breach of the 16th clause of Ordinance No. 4 of 1841." The Magistrate (*Stewart*) delivered judgment as follows:

"The question as to whether Bagatelle playing is a game of chance, appears to have been settled in the affirmative by the Supreme Court in a Gampola case,* and it is therefore unnecessary for the Court to go into it. On the other question, the Court is inclined to doubt very much whether the 16th clause refers to gamblers. Gambling in general, as well as gambling at liquor shops or taverns, is made an offence and punishable by the 4th clause, section 4; and it could not therefore have been intended to provide again for gamblers by the 16th clause, which is specially directed against persons permitting or countenancing gambling: the only words in it that by any possibility could be extended to gamblers, are the words 'and every person who shall be a party to such playing,' &c. But in construing this clause, or to arrive at the true import or correct application of these words, we must not only look to the object of the clause itself, but must also have in view the 4th clause which, by previously providing for gambling at liquor shops or taverns, takes away the only ground for such possibility. Nor can it be supposed that the framers of the Ordinance would have twice provided for gamblers in the same enactment and for the same offence. Besides the words 'party to' do not always refer to those immediately concerned in any matter or thing, as for instance the expression 'party to a murder' does not imply or necessarily include the actual perpetrator of the deed. The words must be taken in connection with the whole Ordinance, and especially with reference to the context or object of the 16th clause; and we cannot then but come to the only and reasonable conclusion, that they simply and only refer to the context of that clause, namely to persons countenancing or permitting gambling. Further, it could never have been intended to punish gambling at taverns or liquor shops with less severity (the 16th clause making the offence only punishable by a fine) than gambling general-

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* P. C. Gampola, 15071. Vide Civil Minutes of 19th January, 1865.

ly, for which the 4th clause imposes imprisonment, when we all know that gambling at taverns is the worst kind of gambling in this country and the more serious offence, taverns being generally the resort of the most worthless. The Court thinks, therefore, that the 16th clause is not intended to meet the case of gamblers, and in support of that opinion, if any doubt remain on the subject, it would refer to a decision of the Supreme Court in Mills' Reports, page 21 (dated 27th April, 1860) in which that Court considered that the case of keepers of taverns, shops, places for the retail of spirits or other liquors, houses and other places, open or enclosed, is provided for in the 16th, 17th and 19th clauses, as contra-distinguished from the case of persons who game or play in the abovementioned places, which is provided for in the 4th clause, section 4. The defendants are found not guilty."

In appeal, by the complainant, the judgment was set aside, and the defendants found guilty and fined Rs. 5 each; and per CREASY, C. J.— "This was a charge, under Ordinance No. 4 of 1841, section 16, against defendants, as parties to gaming at a game on a Bagatelle table in a tavern. As to the question whether Bagatelle playing is within the meaning of the clause of the Vagrant Ordinance, (No. 4 of 1841) against gaming, the Police Magistrate rightly followed the decision of this Court in the Gampola case referred to. The Police Magistrate acquitted the defendants on another objection taken, namely, that the defendants were not proved to have been tavern-keepers "permitting or countenancing gambling," but to have been the actual gamblers. It was urged that these defendants were therefore not punishable under the 16th clause, though they might have been under the 4th clause. But it is no uncommon thing for an offence to be punishable under more than one clause of an Ordinance or Statute. The prosecutor, in such cases, may proceed under which clause he pleases. The words of the 16th clause are as follows: 'and it is further enacted, 'that all keepers of taverns or other shops or places for the retail of 'spirits or other liquors, who shall wilfully permit or countenance in 'or about the same, or in any shed or other building, compound, 'garden or land, adjoining or near thereto, and occupied by or be-'longing to the keeper of such tavern, shop or place, any playing, 'betting, or gaming at cock-fighting or with any table, dice, 'cards or other instruments for gaming at any game or pretended 'game of chance, and every person who shall be a party to any such 'playing, betting or gaming or in any way in transgressing or neg-'lecting the provisions of this clause, shall, on the *first* conviction 'thereof, forfeit and pay any sum not exceeding the sum of £2.' Now, common sense and the ordinary understanding of words clearly point the actual gamblers as 'parties to the game,' and these defendants are manifestly liable under this clause. A decision of this Court on the 19th clause has been cited; but there is an essential difference between that clause and the 16th. The 19th clause does not contain

the all important words 'every person who shall be a party to any such playing, betting or gaming.'"

P. C. Galle, 83440. This was a prosecution, under Ordinances 24 of 1848, and 4 of 1864, for felling timber on crown land without a license. The defendant, having been convicted, was sentenced to three weeks' hard labor. *In appeal, Morgan*, for the appellant, contended that the Magistrate had no power under the first mentioned Ordinance to impose any punishment other than a fine; and that he had no authority to try the case under the Ordinance of 1864, in the absence of a certificate from the Queen's Advocate, the prescribed penalty being "such punishment by fine or imprisonment, with or without hard labor, as it shall be competent for the Court before which such conviction shall be obtained to award." The judgment, however, was affirmed; the Chief Justice remarking that the objection as to jurisdiction should have been taken in the Court below. Timber Ordinance.

February 21.

Present CREASY, C. J.

P. C. Balapitimodara, 43682. The charge was "that the defendants did, on the 18th January, at Gompenuwella, forcibly take 40 Gorke planks of the complainant." The 1st defendant (who was a police headman) and another, appeared to have seized the planks, as not answering to the description of timber mentioned in a permit produced by complainant. The Magistrate discharged the accused, on the ground that the permit was not in complainant's name. *In appeal*, the judgment was affirmed; and per CREASY, C. J.—"No legal charge is set out in the plaint." Irregular plaint.

P. C. Jaffna, 1484. Two of the defendants in this case having been absent on the day of trial, the Magistrate (*Livera*) found them guilty of contempt, and sentenced each to fourteen days' imprisonment. No opportunity to shew cause seemed to have been given to the accused, who urged, in their petition, that they had not attended Court in consequence of a promise made by complainant, before a number of witnesses, that he would withdraw the charge. *In appeal*, the order was set aside; and per CREASY, C. J.—"A Police Magistrate can only punish for contempts committed in the face of or within the precincts of his Court, and not out of Court. See Thompson's Institutes, vol. 1, page 470. The first part of clause 107 of Ordinance 11 of 1868, empowers a Police Magistrate to punish a party who does not attend the Court after due notice or summons, but these defendants have not been sentenced under this part of the Ordinance. And even when Police Magistrates think it their duty to act upon this part of the Ordinance, they should always give the party charged Contempt.

an adjournment until the following day, so that he may have a fair chance of proving that the default for which he is blamed was not wilful and disrespectful. The letter of the concluding part of clause 107 of Ordinance 11 of 1868 may not require this, but it is required by fairness and equity."

Felling timber without license.

P. C. Badulla, 16343. The plaint charged the defendant with having felled and removed, without license, certain trees from crown land, in breach of clauses 5 and 15 of Ordinance 4 of 1848. The Magistrate (*Gibson*) held that the action was prescribed by the 14th clause of the Ordinance, as the charge had not been preferred within 3 months of the commission of the offence, and discharged the defendant. *In appeal*, it was urged that, by the Ordinance No. 1 of 1865 which should be read together with 4 of 1848, the time limited for the institution of the action was 2 years. The judgment was, however, *affirmed*; and per CREASY, C. J.—"I cannot say that the Magistrate was wrong in dismissing a charge which purported to be founded only on an Ordinance, 4 of 1848, about Port-Dues, which has long been repealed; and when the Ordinance 24 of 1848, to which the parties appear to have referred at the trial, was against the complainant. The Ordinanance 4 of 1864 (called erroneously in the petition of appeal 1 of 1865) was not mentioned in the plaint; and even if it had been, the complainant does not appear to have had proof ready that the Queen's Advocate had elected to proceed in the Police Court. See Ordinance 11 of 1868, section 119."

Nuisance.

P. C. Mannar, 3826. In this case, the Magistrate held that washing dirty linen in a public tank, which was proved to have been used for bathing purposes, was an offence within the meaning of section 7, clause 1 of Ordinance 15 of 1862. *In appeal*, (*Dias* for appellant) affirmed.

Toll.

P. C. Badulla, 16391. The defendant, who was a toll-keeper, was charged with having "knowingly and wilfully refused to allow a cart to pass over the bridge at Badulla, in breach of the 7th and 15th clauses of the Ordinance No. 14 of 1867." The facts of the case are fully given in the following judgment of the Magistrate (*Gibson.*) "This case is brought by the officer of the Public Works Department against the Renter of Badulla, for stopping, on the 6th of January, a Government cart laden with tools and rice, the driver of which was duly furnished with a pass, in breach of the 15th clause of the Ordinance 14 of 1867. The whole of the facts stated by complainant's witnesses are corroborated by the accused's witnesses, that the pass was duly produced but that accused would not accept of the same or let it pass until money had been paid, the defendant stating that carts

laden with rice are not entitled to be exempt. The Court is of opinion that the fact that the cart was loaded with rice would not prevent it from being entitled to come under the exemption given in clause 7, which exempts all vehicles, etc, employed in the construction or repair of any road, etc; for as vehicles themselves cannot work, it means clearly those vehicles which convey tools and provisions required by the persons constructing the said road; and this cart is proved to have been laden with both rice and tools. Again, it was urged by defendant's counsel that, because the cart was going for a distance of more than 10 miles from the Badulla toll, the complainant's pass would not exempt it; but the Court is of opinion, that the Ordinance means that a certificate may pass any vehicle, etc, through any toll-bar which is within the distance of ten miles from the head quarters of the Officer superintending the work. Here the toll station is close to the Public Works Department's Offices, and therefore within the prescribed distance. On these grounds, I don't consider that accused had any right to demand payment for the carts, and consequently he has been guilty of a breach of the Ordinance, though I would believe not wilfully. The accused is found guilty and sentenced to pay a fine of Rs. 10. *In appeal*, (*Grenier* for respondent) affirmed.

P. C. Batticaloa, 5554. The plaint was as follows: "that the defendant did, on the 9th January, draw toddy from a palmyrah tree standing in the garden of Santiago Kaitan, without license of complainant, the Renter, in breach of the 39th clause of Ordinance 10 of 1844." The Magistrate held that no licensed retail dealer *for the district* having been appointed, the sub-dealer (who was the tavern-keeper) had authority to license the defendant, who was accordingly acquitted. *In appeal, Grenier*, for the appellent, contended that, in the absence of a district retail dealer, the Ordinance provided that the license should be obtained from the Government Agent or any person duly authorised by him in writing. [But what right has the complainant to issue a permit?—C. J.] Clearly none whatever; but that did not justify the defendant breaking the law. [He is charged with not having obtained your license.—C. J.] *Ferdinands*, for the respondent, was not called upon. Per CREASY, C. J.—Affirmed. Arrack Ordinance.

February 28.

Present CREASY, C. J.

P. C. Colombo, 5008. Under a charge for maintenance, the Magistrate discharged the defendant, on the ground that he had previously been acquitted on the specific ground that the paternity of the child had not been established. *In appeal*, the finding was affirmed; and per CREASY, C. J.—"The question of paternity has been twice Maintenance.

distinctly raised, and has received two distinct adjudications. It is not like the question of a fresh desertion."

Fiscal's Ordinance.

P. C. Panadure, 20384. The defendants (eight in number) were charged, under clause 23 of Ordinance 4 of 1867, with having resisted and obstructed the complainant in the execution of his duty, as a Fiscal's officer, while executing a J. P. warrant. The Magistrate held as follows: "I don't believe there has been actual resistance and obstruction to the complainant in the execution of his duty;" and the accused were accordingly acquitted. *In appeal*, the judgment was set aside and case sent back for further hearing, except as to the last defendant whose acquittal was affirmed. And per CREASY, C. J.—"It is not necessary that actual physical force should be used in order to constitute 'resistance or obstruction,' under the Fiscal's Ordinance, clause 23rd. If the Police Magistrate believes that the defendants prevented the officer from doing his duty, by meanaces and show of violence, (of which there appears to be abundant proof,) he ought to find them guilty."

Toll.

B. M. Colombo, 8445. The Wellawatte toll-keeper charged the defendant with having caused a box 4 × 2 feet, a bag containing goods and two bundles of clothes to be removed from a hackery on one side of the toll-bar and loaded in another hackery on the opposite side, without paying toll, in breach of the 19th clause of Ordinance 14 of 1867. The Bench convicted the accused, holding that it was "a clear case of evasion of toll," and fined him Rs. 20. *In appeal*, (*Kelly* for the appellant,) the judgment was affirmed; and per CREASY, C. J.—"The appellant did not offer to pay the toll as for a loaded vehicle, and it is therefore not open to him to raise the point now suggested upon the wording of the 19th clause, as to payment of toll as for a loaded vehicle. The Supreme Court is strongly of opinion that this case might have been dealt with under the concluding part of the 17th clause, which, after specifying certain acts of evasion of toll, directs that 'if any person shall do any other act whatsoever, in order to evade or reduce the payment of any toll, and whereby the same shall be evaded or reduced, every such person shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five pounds.'"

False information.

P. C. Badulla, 16348. The charge in this case was "that the defendant did, on the 16th day of December, at Badulla, wilfully give false information to H. L. Moysey, Esquire, J. P. for Badulla, with intent to support a false accusation against complainant and four others, in breach of the 166th clause of Ordinance 11 of 1868." *In appeal*, against a conviction, *Grenier*, for appellant, contended that

the plaint was essentially defective in not setting forth the nature of the information alleged to be false. The Appellate Court had, he believed, repeatedly ruled that defendant should have full notice of what the false information was.* The judgment, however, was affirmed ; the Chief Justice remarking that, as the objection had not been taken in the Court below, the defendant no doubt understood the nature of the charge against him, and the irregularity could not be regarded as having prejudiced any of his substantial rights.

P. C. Colombo, 5400. The plaint was "that the defendant did, on the 29th of December, at Talangame, keep, hold or occupy a house for the purpose of common or promiscuous gaming, in breach of the 19th clause of Ordinance 4 of 1841." The Magistrate *(Fisher)* held as follows: "I do not think the evidence in this case is strong enough to warrant a conviction. I think it is necessary to support the charge, that more than one specific instance of gaming should be proved, to make the accused amenable to the clause of the Ordinance under which he is prosecuted. The very essence of the offence consists in the oft repeated acts of gaming in which the public are allowed to take part. In place of this evidence, the prosecutor tenders the rumour which is prevalent in the village and witnesses who speak to having heard the voices of people while gambling in the accused's house. One specific instance of gaming is alone proved." *In appeal*, per CREASY, C. J.—"The judgment and all the proceedings in this case are set aside, as the Police Court had no jurisdiction to try such a charge. This was a prosecution under clause 19 of the Vagrant Ordinance (No. 4 of 1841,) which clause is as follows: 'And it is further enacted, that all persons who shall keep, hold, occupy or use any house or other place, open or enclosed, for the purpose of common or promiscuous gaming, playing, or betting at cockfighting, or with any table, dice, cards, or other instrument for gaming, at any game or pretended game of chance, shall, upon the first conviction thereof, suffer imprisonment at hard labor for a period of six months, and shall forfeit and pay the sum of five pounds, and shall, upon the second and every subsequent conviction, suffer imprisonment at hard labor for a period of twelve months, and shall forfeit and pay the sum of ten pounds.' The Court that convicts under this clause (even for a first offence) must sentence the offender to imprisonment at hard labor for six months and also to a fine of five pounds. No other sentence would be legal. The Court has no discretion as to the term of imprisonment or as to the amount of fine, and it has no discretion as to imposing one only of these modes of punishment. A sentence of imprisonment for six months is beyond the power of the Police Court to inflict, and the case does not come within clause 96 of Ordinance

Gambling.

* See judgments in P. C. Galagedara, 14253, 3rd March, 1870; P. C. Panadure, 16374, and P C. Colombo, 11689, 30th August, 1870.

No. 11 of 1868, inasmuch as the Vagrant Ordinance, clause 19, does not leave to the discretion of the Court the infliction of both or either of the punishments, nor does it make one punishment contingent on the non-fulfilment of the other. Under these circumstances, I cannot reverse the judgment and order the sentence appointed by law to be pronounced by the Police Court, which I certainly should have done had it not been for the difficulty about the jurisdiction. The Police Magistrate was right in considering, that the same kind of evidence, as to the place being used for common or promiscuous gaming, is necessary under clause 19 as under clause 4, section 4. It may, however, be useful to repeat in this judgment, what has often been stated from the Bench of the Supreme Court, that, though generally necessary, it is not invariably necessary, to prove gambling more than one time. The gambling on the occasion of the seizure may have been such as of itself to prove that the place where it was going on was a place 'used for the purpose of common or promiscuous gaming.' The instance has been more than once suggested, of a man coming to a race-course with a booth and a roulette table, to which any body and every body on the course has free access and ready welcome, for the purpose of gambling. It is self-evident that this would be common and promiscuous gaming. The Police would do their duty by pouncing on the parties at once; the gambling booth-keeper would be liable to be convicted under the 19th clause, and the players would be liable under the 4th clause, section 4 of the Vagrant Ordinance. But the reason why I should in this case have reversed the judgment (had it not been for the jurisdiction difficulty) is, that the Police Magistrate, in giving his judgment, totally overlooked the evidence of Abraham Perera, which is clear and distinct to his having seen gambling on previous occasions, and which evidence was not in the least modified or impaired on cross-examination. If it appeared that the Police Magistrate had disbelieved this evidence, I should of course have not interfered with his decision on a matter of fact; but where a Police Magistrate forms a judgment in manifest forgetfulness of a material part, and a not discredited part, of the evidence, an error in law is committed, which the Supreme Court may properly correct. There would be fewer failures in prosecutions of tavern keepers, who encourage gambling, and of gamblers at taverns or in their appurtenances, if proceedings were more frequently taken under the 16th clause of the Vagrant Ordinance, which imposes a fine of two pounds for the first offence. In prosecutions under the 16th clause, it is enough to prove gambling on the occasion for which the prosecution is instituted. This Court has recently decided in Police Court, Kandy, No. 92987 (judgment given in Supreme Court on 14th February, 1873) that the 16th clause applies to the persons who are playing, betting and gaming, as well as to the keeper of the tavern and those acting under him. The great thing to guard

against, in enforcing the clauses against gambling in the Vagrant Ordinance, is the unfairness of using this Ordinance to punish a party of friends and acquaintances in humble life, who, for once in a way, may have a game, into which chance enters, for moderate stakes, in a place not specially prohibited by the Ordinance. They are no more to be punished, under the Vagrant law, than a party of persons in higher station would be, who have a game at vingt-un or loo in the bungalow of one of the party. But gambling, such and under such circumstances as the Vagrant law clearly forbids, is a very serious offence both in itself and on account of the numerous crimes of which it is the cause. It is an offence lamentably common in the Island ; and when clear proof can be obtained, it ought to be promptly prosecuted and sharply corrected."

Contempt.

P. C. Avisawella, 16368. The complainant, on the first day this case came on for trial (February 18,) stated that he was not ready, as his subpœnas had not issued. On an immediate enquiry by the Magistrate, it was found that the necessary stamps had not been supplied by the complainant, who, on being questioned, replied that he had meant to say he had no money to supply stamps. He was thereupon ordered to give bail, to appear two days after, to shew cause why he should not be punished for contempt in having endeavoured to mislead the Court. The complainant duly appeared on the 20th, and, although all his witnesses, save one, were in attendance, he declined to go to trial, alleging that he did not wish the case to be tried by the present Magistrate (*Jumeaux*) against whom he had recently given evidence before a Commission of Enquiry. The Magistrate allowed a month's time, to enable the complainant to apply to the Supreme Court for a transfer of his case to some other district, and proceeded to adjudicate on the charge for contempt. The complainant having denied that he made the statements on which the contempt was founded, the evidence of the Court Interpreter and of a Proctor (*Marshall*) was received, confirming the record in the case-book ; and he was found guilty and sentenced to fourteen days' imprisonment. *In appeal, (Kelly* for appellant*)* the order was affirmed ; and per CREASY, C. J.—"I think that in this case a contempt of Court was committed in the face of the Court, which the Police Magistrate had jurisdiction to punish by sentence of imprisonment."

Police Ordinance.

P. C. Galle, 83983. The plaint in this case was as follows: "that the defendants did, on the night of the 11th February, at Galle esplanade, have or use music, so as to disturb the repose of inhabitants, in breach of the 90th clause of the Ordinance No. 16 of 1865." The Magistrate convicted the defendants and fined

them each Rs. 10. *In appeal*, the judgment was set aside and charge dismissed; and per CREASY, C. J.—"The plaint is informal, as not following the words of the Ordinance; but the serious objection is, that the evidence itself does not establish the commission of any offence within the 90th clause of the Ordinance No. 16 of 1865. It does not appear that the defendants 'had or used music calculated to frighten horses' (see the words of the clause) or that they 'made any noise in the night so as to disturb the repose of the inhabitants.' The averment that the disturbing noise was made 'in the night,' is very material in such a charge."

March 7.

Present CREASY, C. J.

Receiving stolen property.

P. C. Panadure, 20573. The plaint was as follows: "that the defendant had on this day (20th February) two earrings, the property of the complainant, in his possession, knowing the same to be stolen." The defendant was acquitted, but it was ordered that the earrings be given over to complainant. *In appeal*, *Morgan*, for appellant, contended that there was sufficient evidence in the case to fix the accused with guilty knowledge. The defendant had taken the jewels, the very day after the theft, to a goldsmith (who was called as a witness) and had asked him to convert them into studs. This circumstance, coupled with the fact that the defendant had not led any evidence to show how he had come by the earrings, ought to be taken as conclusive of his guilt. Per CREASY, C. J.—Affirmed. There was no need on this plaint to prove that the defendant was the thief. He is not properly charged as receiver; but I should not have set aside the proceedings on a mere technicality, if the Police Magistrate had convicted the defendant on this evidence. But the sufficiency of this evidence, in point of fact, was for the Police Magistrate's judgment, and it is not for me to interfere with it."

March 14.

Present CREASY, C. J.

Toll.

P. C. Tangalla, 34349. Defendant, who was a toll-keeper, was charged, under the 15th clause of the Toll Ordinance, with having improperly demanded and received 12½ cents, on account of an "unloaded bullock which passed the toll station of Sinimodera." The Magistrate convicted him, holding that the defendant "would have been justified in making the increased demand, had the animal been yoked to the cart and lent its strength to the draught." *In appeal*, it was urged by defendant, in his petition, that the established practice

had been "that every addititional bull attached to a cart, whether it were properly yoked to the shaft or tied behind the cart or led behind it, was liable to the payment of 12½ cents." Per CREASY, C. J.—"Affirmed. The bullock was not 'additional' to the pair drawing the cart which were paid for, inasmuch as it contributed no additional drawing power. There is not even satisfactory proof that it was in any way attached to the cart."

P. C. Balepitimodara, 43719. This was a charge of assault. The Magistrate discharged the accused, holding that the evidence was not "satisfactory." *In appeal*, the judgment was set aside and case sent back for further proceedings; and per CREASY, C. J.—"There is clear proof of an assault; there are no material variances in the evidence given by the witnesses; and nothing appears against their character. The Police Magistrate gives judgment in these words: 'The evidence is unsatisfactory, accused discharged.' This may merely mean that the Police Magistrate is not satisfied as to the ownership of the land, about which many questions have been asked. But that does not touch the question of assault, unless indeed the defendant proves clearly that the land and trees are his, and that, after due request to the complainant not to trespass, he moved the complainant away, using no unnecessary violence. No evidence whatever on the part of the defendant has been taken. Unless he adduce such evidence as materially shakes the complainant's case, he ought to be convicted." New trial.

P. C. Colombo, 6229. The defendants, who were described at the trial as "hawkers," "out-door proctors," "brokers to proctors," etc., were found guilty, and fined Rs. 10 each, on the following plaint: "that the defendants did, on the 18th of February, 1873, at Colombo, loaf about the Police Court premises, without any ostensible means of subsistence, in breach of clause 3, section 4 of Ordinance 4 of 1841. *In appeal*, (*Brito* for appellants,) per CREASY, C. J.—"Set aside and proceedings declared null and void. The plaint does not, in terms of the Ordinance 4 of 1841, clause 3, section 4, charge the defendants with 'wandering abroad, or with lodging in any verandah &c.'; but it charges them with 'loafing about the Police Court premises.' We consider this substitution of American slang for the English of the Ordinance to be extremely improper; and the term 'loafing,' so far as we understand it, is by no means synonymous with either 'wandering abroad' or 'lodging.' Moreover, the evidence in this case does not show that these defendants were persons 'wandering abroad,' and it does not show that they were 'lodging' in any 'verandah' or other place mentioned in the Ordinance." Vagrant Ordinance.

Coffee stealing.

P. C. Kandy, 93141. The defendants were convicted of theft and of having received stolen property with guilty knowledge, and sentenced each to three months' hard labor. *In appeal*, (*Beven* for appellants) the judgment was affirmed; and per CREASY, C. J.—"The appellants in this case were charged with stealing a bag of coffee, the property of H. Thompson. They were also charged with having received the same with guilty knowledge. The appeal is on the evidence; and, unless it appears that there was no evidence at all, such as should have been left to the jury if the case had been tried before judge and jury, no error of law has been committed, and the conviction must be affirmed. The appellants were proved to have been taken after dark, on the road near the Peradeniya station, carrying this bag of coffee and another bag. They told the person who took them that it was purchased coffee. Afterwards, they told the Police Serjeant 'that they had purchased the coffee from traders, and when asked to point out the sellers, they said they were not near at hand. They gave the names of some Moormen. They said that they got the coffee from Moormen but the bags from cartmen.' The witness adds, 'they told me this when I asked how they got the bags, seeing they were branded with names. I asked them to point out the cartmen from whom they got the bags; they said they would not.' This happened on the night of 10th January last. It was further proved by Mr. H. Thompson that, about the 22nd December, he had sent 47 bags of coffee to go by rail to Colombo, the coffee being plantation coffee like the coffee produced, and that the bag found on the prisoners bore marks showing to whom it belonged, and also that it formed part of that particular consignment. He stated, on cross-examination, that he had received a receipt from Colombo, stating that the consignment was correct, and that the bags in which the consignment went down had been returned in bulk. This is treated, in the petition of appeal, as absolute proof that all the coffee and all the bags sent by Mr. Thompson had got safe to Colombo. It is not to be considered as amounting to anything of the kind. In the first place, it is all hearsay evidence; and, even if that blot be over-looked, it amounts to nothing more than that no deficiency or substitution had been detected, which is a very different thing from proof that all the very coffee which Mr. Thompson consigned, and all the very bags which he sent, had come safely to the proper hands. As Mr. Thompson stated in his evidence, 'it is quite possible, that at the Railway store or at our store in Peradeniya, the coolies might have exchanged a bag of good coffee for rubbish or indifferent coffee.' There was, therefore, in this case not only evidence, but very strong evidence, such as would have been left to a jury."

Coolies. Misjoinder of defendants.

P. C. Matara, 71470. The defendants (59 in number) were charged as follows: "(1) that the defendants did, on the 1st of February,

at the coffee estate called Craven Estate, without reasonable cause, neglect and refuse to work on the said estate at the usual time, and wilfully disobey the orders of complainant, their employer, and grossly neglect their duty, contrary to the 11th clause of Ordinance 11 of 1865; (2) that the defendants did, on the said 1st of February, at the place aforesaid, quit the service of the complainant, without leave or previous warning of one month, contrary to the 3rd and 11th clauses of the said Ordinance." The complainant, (*Lecocq*) while being cross-examined, said, "the defendants have been paid their wages in part, not in full. They have received their rice weekly. The total amount due to them is Rs. 884. This is the balance due after debiting them with the rice given. They never asked me for their wages. At the request of the kangany, I did not pay them * * The amount of Rs. 884 is the wages of the defendants for five months: not their full wages, but part of their wages." The Magistrate delivered the following judgment: "The defendants left the service of the complainant on the 1st of February. The complainant states upon oath that no notice was given to him as required by the Ordinance. * * The evidence does not prove that any application was made for payment of the wages due. The complainant supplied the defendants with rice weekly, and was ready at any time to pay them what was due, but retained the wages at the request of their kangany, and they tacitly acquiesced in this arrangement. I have no reason to doubt the truthfulness of complainant's statement. The defendants are found guilty, and sentenced to be imprisoned at hard labor for two months and to have their wages due for one month forfeited."

Dias, for appellant, would not trouble the Court on the question of notice, the Magistrate having found as a matter of fact that no notice had been given. But he would draw attention to the passage in the petition of appeal, in which it was stated that one plaint had been submitted against all the accused, including some 30 men, 12 boys, and 10 women, (some with infants) with the view of preventing one accused from giving evidence for another. There was clearly a misjoinder of defendants; and as each could only be held responsible for his or her individual acts, it was extremely irregular to have lumped them up together, to answer jointly to four distinct charges laid in one plaint. But apart from the legal objection, he contended that the coolies were justified, under the 21st clause of the Ordinance, in leaving, as several months' wages were in arrear, and the only excuse for this pleaded by complainant was that the kangany had asked him not to pay.

Ferdinands, for respondent.—The legal objection should have been taken before plea. In cases before the Supreme Court, objections of this nature were required to be taken before the jury were sworn. (Ordinance 12 of 1852, clause 19.) No substantial injustice had been done, and the Court would not therefore interfere. If the Magistrate

had gone on with the trial, after the accused had intimated their wish to call some of the defendants as witnesses, the proceedings would have been irregular. This was a case in which the argumentum ab inconvenienti clearly applied.

Per CREASY, C. J.—"In this case 59 defendants have been charged and convicted together under the Labor Ordinance. The first count of the plaint, charges them all with neglecting and refusing to work: the 2nd count charges them all with desertion. There are no other counts. The defendants pleaded not guilty. At the end of the complainant's case, but not before, their Proctor took an objection about misjoinder, not alleging that some of the defendants required the evidence of others, but saying that 'there ought to be 59 plaints, one against each cooly.' Evidence was then called for the first defendant, about an alleged conversation with the complainant, during which the first defendant, a kangany, gave notice. It did not appear that any of the other defendants were present, or took part in this. The complainant had positively denied this notice. The Police Magistrate gave judgment in favor of the complainant, and convicted all the defendants, sentencing them all to the same imprisonment and stoppage of wages. The Police Magistrate's finding against the 1st defendant's evidence, and in favor of the complainant's evidence about the notice, is of course conclusive. No other notice was attempted to be proved. There had been no demand of wages, so as to let in the defence of wages being in arrear; and there is nothing in the case in favor of the defendants (who have all appealed) except the enormous and certainly inconvenient number of accused parties who have been lumped together in this single prosecution. Our present Ordinances about Police Court proceedings contain nothing, and the older Police Court Ordinances and Rules contained nothing, about joinder and misjoinder in Police Court prosecutions. If we are to follow the analogy of the English Law as to indictments, the present would be held a clear case of misjoinder; for here several persons are jointly charged with breach of duty, the duty as to each individual arising out of his own separate contract with the employer, and not from anything agreed to by them jointly and in each other's behalf. See Jervis' Archbold's Practice, 16th edition, p. 63, citing 2 Hawk. c. 25 s. 89, and other authorities. See also the late Mr. Justice Talfourd's edition of Dickinson's Quarter Sessions, page 169. As to how advantage of this defect is to be taken, the English authorities draw distinctions scarcely applicable here; but they all agree that, even where a number of offences or of offenders are joined in one indictment, so as to make the collective trial of them highly inconvenient and probably unfair, the Court has power to quash the indictment. The objection of misjoinder taken in this case, though not very formally at the trial, and more fully in the petition of appeal, is, I believe, new in our Courts. It is also, I believe, a novelty to find more than

half a hundred accused persons put to trial together on one such charge. But it is certain that ever since Police Courts have existed in this Island, that is since 1843, it has been usual to try several defendants together for a joint offence, when they have, by the same transaction and acting in concert with each other, broken duties of the same kind, the breach of which is criminally punishable, even though the duty as to each offender originated in something personal to himself. I feel bound to regard this constant usage of 30 years, as establishing a consuetudinary law allowing such joinder; subject nevertheless to the power of the Court to interpose and to amend or quash the proceedings, when it is manifest from the inordinate number who are jointly accused, or from other circumstances, that to try them in a heap will be inconvenient: and the inconvenience which the law regards in these matters, is not as to the interest of the prosecution in obtaining a wholesale conviction, or of the officials in getting the work soon over, but it is as to the interest which each prisoner has in securing a full and careful investigation of the case, as it affects himself individually; and in not being deprived of any probable means of defending himself. It is stated in the 1st volume of Thomson's Institutes, when speaking of Police Courts, that 'if an improper number of persons are made defendants, in order to exclude them as witnesses, the Magistrate should exclude [that is strike out of the plaint] those so made, and allow them to be called as witnesses.' A reference is given to Beling and Vanderstraaten's Police Court cases, p. 126. In the present case, the petition of appeal urges that the defendants lost the advantage of each other's evidence. But no distinct application to strike out names from the plaint, so that specified parties might give evidence for specified other accused, was made at the trial. Such application ought to be distinctly made and ought to be supported by affidavit. Still, the Police Magistrate's attention was to some extent drawn to the objection of misjoinder; and it is obvious that there must be always a great risk of shutting out evidence, where a multitude are put on their trial at once. There are other inconveniences in such a practice. Here a whole gang of coolies is charged and tried together. According to the usual state of things, there must be among them married women whom the law would consider as acting under marital control, and who therefore ought to be acquitted. There would also be children, who must naturally be taken to have trusted their parents about proper notice having been given, and who ought to be held innocent, as a matter of common sense as well as a matter of law. But no discrimination has been exercised; nor can effective discrimination be possible, if fifties and sixties of coolies are thus to be tried in a lump. I shall not define the exact number that may be joined in one charge. Whatever number might be fixed on, the old quibbling objection of the Sorites would follow;—the next highest number would be mentioned; and

it would be asked, where was the magical difference between that and the number permitted. But I will say that, in my opinion, more than ten such accused should seldom be tried together, and more than twenty should never be. I shall not set aside the proceedings as to the 1st defendant, the kangany. His case has been fully investigated ; and it is clear that none of the other defendants had anything to do with the notice alleged by him. With regard to the others, I shall quash the proceedings. Judgment affirmed with respect to the 1st defendant. As to the others, the conviction is set aside, and the proceedings are delared null and void."

March 19.

Present CREASY, C. J.

Vagrant Ordinance.

P. C. Galle, 83608. The defendant, who had been legally divorced from his wife, was convicted, for the third time, of not maintaining his children by her, and sentenced, under the 5th clause of Ordinance 4 of 1841, to be imprisoned at hard labor for four months and to receive fifteen lashes on the buttocks. *In appeal, (Dias, Grenier* with him, for appellant) per CREASY, C. J.—"Case sent back for the Police Magistrate to re-consider the legality of the sentence, and to alter and amend the sentence at his discretion. The Police Magistrate has sentenced this man to be imprisoned at hard labor for four months (which is lawful under the Vagrant Ordinance 4 of 1841, clause 5, and Ordinance 11 of 1868, clause 97 ;) and he has also sentenced the man to receive fifteen lashes on the buttocks. The usual way of flogging convicted prisoners in this Island, is by inflicting the lashes on the back ; and I strongly incline to think, that to inflict the lashes on the buttocks (especially on a full grown man) would be a cruel and unusual 'punishment,' such as our Courts, acting in the spirit enjoined by the Bill of Rights, never ought to order. If the Police Magistrate, on reflection, adheres to his sentence, I will not set it aside without first consulting my colleagues ; but I strongly advise him to think it carefully over ; and as the whole question of the punishment will be open to him on this review, it may be well for him to consider whether the demerits of the case may not be better dealt with by ordering the term of hard labor and imprisonment already imposed, and by adding to it not lashes, but a requirement to give security for good behaviour for a year, under clause 6 of the Vagrant Ordinance 4 of 1841. Such a recognizance will be forfeited, if the man fails to supply proper maintenance for the children during the year."

March 26.

Present CREASY, C. J.

P. C. Galle, 84931. The defendant, who was a toll-keeper, was charged, under the 15th clause of Ordinance 14 of 1867, with having illegally demanded and received toll on a hackery from an Overseer of the Public Works Department. The Magistrate found the accused not guilty in the following judgment: "A novel point has arisen in this case, which turns altogether on the construction to be placed on the 7th clause of the Toll Ordinance. By that clause 'all persons, vehicles, animals or boats employed in the construction or repair of any road, etc. shall pass without payment of toll on production of a certificate of such employment from the officer superintending the work.' Here it is questioned whether the vehicle of the complainant, such vehicle being used for the convenience of the complainant and not in the construction of the road, is exempted. I am clear that it is not, unless a construction other than that the words naturally bear is to be placed on them. If complainant were passing a ferry, the certificate of employment produced by him would exempt him from the ferry toll; but as he was not liable to toll for passing this road toll, no exemption is conferred on him. Turning then to the certificate filed, it is to be observed that that certificate covers D. C. Jayasurya, but does not cover the cart employed in conveying him. It cannot be said to be employed in construction, etc. when it simply conveys a workman and is neither going nor returning with materials. The vehicle then, not having been employed in the construction or repair of any road, is not exempt from tolls." *In appeal*, per CREASY, C. J.—"Judgment of guilty to be entered and defendant to be sentenced to pay a fine of Rs. 10. Persons employed in repairs of roads, etc. as mentioned in the 7th clause of the Ordinance, are exempted from the toll in respect of the animals and vehicles that take them to such work, though the animals and vehicles are not used in the work itself." Toll.

P. C. Matale, 3172. The defendant (Mr. Anton) was charged with having, at Appollagolla Estate, on the 21st February, assaulted and beaten the complainant and falsely imprisoned him. The following is a record of the proceedings at the trial: "Defendant pleads guilty of having pushed the complainant into his stable and kept him there tied and bound, because he would not hand over a gun belonging to Mr. Gray (who died on an estate of which Mr. Anton had charge.) The gun was afterwards handed over to the Police, the complainant promising to give it over to Mr. Anton if he would let him go. Mr. Anton had letters from Murray, Robertson and Co., asking him to look after Mr. Gray's property, and simply detained complainant with the object of getting hold of Mr. Gray's gun. I think the slight detention justifiable, and I cannot fine defendant. Doubtless if he Assault.

had not taken active measures, complainant would have appropriated the gun. The case is dismissed.' *In appeal*, (*Beven* for appellant) per CREASY, C. J.—"There are no grounds for criminal proceedings against the defendant."

Toll.

P. C. Kandy, 93455. The judgment of the Magistrate explains the facts: "In this case the complainant, the proprietor of the Matale coach, charges the defendant with having, on the 29th January last, at Katugastota, demanded and received toll from a passenger vehicle, (the Matale coach) the said coach having previously paid toll on the morning of the same day on its way from Matale to Kandy, in breach of the 15th clause of the Ordinance No. 14 of 1867. In view of the fact that the coach had new passengers in it when it passed the toll-bar the second time, the Court was inclined to think that the taking of the toll might be justified, as complainant benefited by such passengers. But on further consideration, it is felt this should not affect the question ; and seeing that the great object in all legislation of this kind is the levying of what is equivalent for the wear and tear of the road by the plying of carts or vehicles for the conveyance of goods (which the coach in question is not) rendered destructive to roads by the heavy loads they generally carry, the Court cannot help doubting whether the toll was properly levied. By the 9th clause, it is only the vehicle that has a different load in it when it passes the toll bar a second time on the same day that is required to pay toll again, and by the 3rd clause a load is defined as including all description of goods, but not passengers who are not required to pay toll at all but go free. So that passengers could form no load, and therefore whether the coach had any passengers in it or not would be quite immaterial. Again, the express mention of a different load in the 9th clause and the non-allusion to passengers therein, is significant of the fact that passengers do not count. With regard to what was elicited from complainant in his examination as to luggage and parcels of passengers, the Court would quote a passage from Mr. Justice Thomson's work, page 60. * * The above clearly shows that the carrying of luggage or parcels does not necessarily convert a vehicle for passengers (which the coach is) into a vehicle for goods ; nor does the circumstance that the coach is (in the words of the interpretation clause) 'capable of carrying goods and commonly used for such purposes' render it, as was contended for, liable to the impost. The defendant is found guilty and fined Ten Rupees." *In appeal*, the judgment was affirmed ; and per CREASY, C. J.—"The Supreme Court agrees with the Police Magistrate in the construction of this Ordinance."

April 2.

Present CREASY, C. J.

P. C. Colombo, 6790. The 1st defendant was charged with theft and the 2nd with having knowingly received the stolen property. The 1st pleaded guilty and was sentenced to three months' hard labor. The 2nd accused's house appeared to have been searched and some paddy and planks were found. He said he had got the planks from one Carolis Appoo, who on being called and examined by the Court denied having given them to him. No evidence, however, having been led to shew that the paddy and planks had been stolen from the alleged owner, the Magistrate acquitted the 2nd defendant in the following terms: "I cannot convict him before it is proved that a theft has been committed." *In appeal*, by the complainant, (*Ferdinands* for appellant,) per CREASY C. J.—"Affirmed. The confession and the conviction of the thief are not legal evidence against the receiver. I cannot take it on myself to overrule the Police Magistrate's decision that the other evidence of theft was insufficient, though I might myself have come to a different conclusion." Theft.

P. C. Matara, 71564. The defendant was charged, under the 75th clause of Ordinance 16 of 1865, with having assaulted, resisted and obstructed the complainants (two Police constables) in the execution of their duty. The Magistrate (*Templer*) found the defendant guilty and fined him Rs. 100. *In appeal*, (*Dias* for appellant,) the judgment of guilty was affirmed, but the fine reduced to Rs. 50.* Resisting the Police.

P. C. Hambantota, 6292. The defendants were charged, under clause 5 of Ordinance 24 of 1848, with having felled seven Kohambe trees on Crown land, whereas the license authorized the felling of only five. The defence was that the accused had acted under the direction of the holder of the license, (a priest) who however was not called but whose version of the story was deposed to by the Modliar who was the complainant. The Magistrate (*Steele*) found the defendants guilty and fined them Rs. 10 each. *In appeal*, (*Grenier* for appellant) per CREASY C. J.—"Set aside and proceedings declared null and void. The Ordinance 24 of 1848, clause 5, has been repealed by Ordinance 4 of 1864; and the combined effect of clause 2 of this last mentioned Ordinance and Ordinance 11 of 1868, clause 119, takes the case out of the jurisdiction of the Police Court, unless the Felling Timber.

* It was held in P. C. Nuwara Eliya, 8475, that the words "Magisterial Officer" in the 75th clause of the Police Ordinance applied to a Police Magistrate. See Civ. Min., September 5th, 1872.

Queen's Advocate's certificate had been obtained. I should have probably sent back the case, and given an opportunity for these informalities to be set right, but I have grave doubts about the merits. Instead of calling the priest to prove that the defendants (his servants) did not fell extra trees by his authority, the prosecutor gave mere hearsay evidence on the subject."

April 8.

Present CREASY, C. J.

Labor Ordinance.

P. C. Pusselawa, 9219. The defendant (a cangany) was charged, under the 19th clause of Ordinance 11 of 1865, with having seduced a cooly who was bound to work under the complainant. The gist of the complaint was that the cooly in question had been arrested at New Forest Estate, of which complainant *(Armstrong)* was the Superintendent, on a false charge preferred by defendant that the cooly had deserted from West Delta. The Magistrate *(Neville)* held as follows: "The issuing of a warrant for a cooly, without any right whatever to cause him to be arrested, is not seduction in itself, strictly speaking; but it is clearly an attempt to seduce, and renders the person applying for the warrant mala fide, in order under a simulance of law to misappropriate the services of a man bound to another employer, subject to the penalties prescribed. Defendant is found guilty and fined Rs. 30. Defendant to pay complainant's expenses at maximum rate in force." *In appeal*, the judgment was set aside and a verdict of acquittal entered; and per CREASY, C. J.—"Taking a man up under warrant without reasonable or probable cause is a highly culpable proceeding, but it is neither an act of seduction nor an attempt to seduce."

Restoring property.

P. C. Matale, 2750. The defendants were charged with having stolen some jewelry and clothes belonging to complainant and also with having received the same with guilty knowledge. The Magistrate (*Temple*) entered a verdict of acquittal but, believing that the property in question belonged to complainant, ordered that it be restored to him. *In appeal*, per CREASY, C. J.—"The order to give the property to the complainant is declared null and void. It is only the Supreme Court that possesses such power in cases of acquittal. See Ordinance 11 of 1868, clauses 49 and 50."

Evidence.

P. C. Maturata, 7222. Four defendants were charged with assault. The case went to trial on the 23rd December, 1872, against the 1st defendant who was found guilty. On the 25th of March, 1873, the

4th defendant was brought up on a warrant, and the Magistrate (*Hartshorne*) proceeded to try him by reading over, in the presence of the witnesses, the evidence which had previously been recorded and giving him an opportunity of cross-examining them. *In appeal*, by the 4th accused, the judgment was set aside, and case sent back for evidence to be regularly taken and for a proper trial; and per CREASY C. J.—"The course taken here of reading over the old notes, instead of taking the evidence of the witnesses over again in a criminal trial, is precisely that which is strongly censured as improper and illegal in the very valuable judgment of the Privy Council in Reg. v. Bertrand, Moore's Privy Council Cases, N. S., iv, 380. It is to be remembered that the present is a case of actual trial, and not of preliminary proceedings before a Justice of the Peace to which these remarks would not apply."

Contempt.

P. C. Matara, 23126. This was an appeal against a conviction for Contempt. Per CREASY, C. J.—"The order of committal against this appellant is set aside. This appellant, in giving his evidence, stated that he was not present when the cut was actually inflicted. For him, when recalled and asked who cut, to answer 'I do not know,' was in my opinion no contempt of Court, and it was no refusal to give evidence. The circumstance of another witness having stated that this appellant was present when the cut was given, ought not to be taken as conclusive against the appellant, so as to fix him with contempt of Court. I observe also that this appellant was not called on to show cause why he should not be committed, which always ought to be done, except in extreme cases such as an attempt to assault the Judge, or the like."

Corporal punishment.

P. C. Galle, 83608. The judgment in this case (which is reported in page 32) having been reconsidered by the Magistrate, the following order was recorded, under date the 29th March, 1873. "This case has been sent back to me 'to alter and amend the sentence' at my discretion. The Hon'ble the Supreme Court is disposed to recommend me not to impose lashes at all, but to pursue the course prescribed in clause 6. That recommendation, emanating from the highest judicial authority in the Island, would receive from me the utmost deference, if it were not that the 5th clause of the Ordinance renders the convict liable to imprisonment '*and* to corporal punishment, etc.' 'And' being used and not 'or' renders the imposition of corporal punishment imperative. I must therefore sentence to corporal punishment, but, having a discretion as to the number of lashes, I shall only impose *one lash*. My Lords also incline to the opinion that a sentence imposing lashes *on the buttocks*, and not on the back, is illegal, as not being in the spirit enjoined by the Bill of

Rights. A sentence to a like effect has recently been affirmed (vide P. C. Galle, No. 84277 ;) and in my experience as an executive officer, I have frequently known lashes inflicted *on the buttocks*, the object being, as it was the object of the Court in this case, not to place the scars where they were always visible. Acting, however, in strict obedience to the wishes of the Appellate Court, the sentence in this case will be modified and amended accordingly. The accused is sentenced to be imprisoned at hard labor for four months, and to receive one lash on the back; and he is required, at the expiry of the aforesaid four months, to find security in the sum of Rs. 1500 for his good behaviour for one year. The record will now be forwarded, in accordance with the minute of the Executive Government as to corporal punishment, to His Excellency the Governor, with a recommendation that the corporal punishment imposed be remitted, in view of the opinion of the Hon'ble the Supreme Court."

In appeal, (*Grenier* for apellant) the judgment was affirmed, but the sentence was amended by omitting so much of it as ordered the defendant to receive one lash ; and per Creasy C. J.—"The Police Magistrate states that he ordered this lash under the impression that it was compulsory on him to inflict corporal punishment as well as imprisonment. But the Supreme Court does not think that such compulsion exists. The clause (5 of Ordinance 4 of 1841) directs that a person convicted under it shall be liable to imprisonment at hard labor *and* to corporal punishment. The clause does not say positively that the convicted person 'shall suffer imprisonment and shall suffer corporal punishment.' The Ordinance does use this positive language in clause 19, where it evidently meant to leave the Court no discretion as to inflicting both kinds of punishment. But in the clause which we are dealing with, the Ordinance merely says that the offender shall be liable to imprisonment and to corporal punishment. I think that the word 'liable' may be taken distributively, and that it is in the discretion of the Court to enforce that liability as to one of the punishments or as to both of them. If the words had been 'imprisonment *or* corporal punishment,' the Court could not have inflicted both. But as the clause stands, the Court may inflict both or either. The judgment and sentence in this case are in all other respects correct, and are fully warranted by the facts, and also by the law which is to be found in Ordinance 4 of 1841, clauses 3, 4, 5 and 6, and in Ordinance 11 of 1868, clauses 96 and 97."

April 22.

Present Creasy, C. J.

Shooting dogs.

P. C. Matale, 29 5. The defendant was charged with having unlawfully and maliciously shot and killed the complainant's dog, in breach of clause 19 of Ordinance 6 of 1846. The dog appeared to

have been shot while trespassing in the garden of the defendant, on whose part, however, no malice was proved. The Magistrate (*Temple*), found the defendant guilty and fined him Rs. 3. *In appeal*, per CREASY, C. J.—"Set aside. Express malice against the owner is not essential ; see clause 26. But I do not think this Ordinance was meant for the case of a man who shoots a pariah dog, which annoys him by infesting his premises. Observe also the 20th clause. No wanton cruelty was practised here."

Jurisdiction

P. C. Galle, 84167. This was a prosecution for a breach of the 32nd clause of Ordinance 10 of 1844, for illegally keeping and possessing 2 gallons and 2 quarts of arrack. The defendant was found guilty and fined Rs. 100. *In appeal*, the judgment was set aside ; and per CREASY, C. J.—"These proceedings are null and void, being beyond the Police Magistrate's jurisdiction."

Pelting stones.

P. C. Puttalam, 6166. The charge was "that the defendant did, on the night of the 30th March, 1873, at Puttalam, pelt stones at the complainant's house." The Magistrate (*Power*) rejected the plaint, holding that "it was not a common law offence, nor could it be brought under any Ordinance," and referred the complainant, if he had suffered any damage, to a civil action. *In appeal*, the judgment was affirmed; and per CREASY, C.J.—"If the defendant's conduct amounted to any criminal offence, it should have been properly stated in the plaint."

Toll.

P. C. Colombo, 6429. The charge was that the defendants did, on the 28th day of February, 1873, pass the Hendala canal toll station with two loaded pada boats, without paying toll, in breach of clause 17 of Ordinance 14 of 1867. The 1st defendant was a contractor employed by the Public Works Provincial Assistant to effect certain repairs to the retaining wall of the Hendala canal, and was provided with a pass from Mr. Byrne to secure exemption from toll. He had entered into a sub-contract with the 2nd defendant who, in conveying materials for the work, claimed exemption from toll by virtue of the pass he had obtained from the contractor. The Magistrate (*Fisher*) held that "despite the sub-contract, the materials being admittedly for the repairs of the canal, the accused have not been guilty of any improper and unauthorised conduct in passing the toll without payment." A verdict of acquittal was thereupon recorded, and the complainant was condemned to pay the defendants Rs. 10 as reasonable expenses. *In appeal* (*Kelly* for appellant) per CREASY, C. J.— "Affirmed. The decision of the Police Magistrate was right, and it was reasonable to order the expenses of the defendants to be paid by the person who wrongfully summoned them."

Resisting the Police.

P. C. Kandy, 93777. The charge was laid under the 60th clause of Ordinance 10 of 1844, in that the defendant did obstruct, resist and molest complainant in the execution of his duty as a Police officer. The complainant stated in his evidence that he had not his uniform on when he went to seize the arrack in respect of which the resistance was made, and that he had concealed the fact that he was an officer of the Police. The Magistrate (*Stewart*) dismissed the case, holding that to constitute resistance to a Police officer he should show himself as such at the time of resistance, and that, in this instance, the complainant should have disclosed his official character when the seizure was made. *In appeal*, per CREASY, C. J.—"Affirmed. The complainant's own words, in which he says 'we purposely concealed the fact that we belonged to the Police,' make it impossible to convict the defendants of obstructing an officer of Police or Peace officer in the execution of a duty imposed on him by Ordinance 10 of 1844. The defendants could not possibly have the *mens rea* to commit this offence, in the absence of all knowledge or means of knowledge that the person whom he interfered with was a policeman in the execution of his duty. This is not to be regarded as a decision that a policeman is not under the protection of clause 60 of the Ordinance unless he is in uniform. It would be enough if the defendant had notice, in any shape and by any means, of the official character and function of the person whom he obstructed. It would, for instance, be enough if the officer told him at the time who and what he (the officer) was and what he (the officer) was about to do. But here the officer, according to his own statement, altogether concealed his official character."

Labor Ordinance.

P. C. Haldummulla, 2125. This was a charge, under the Labor Ordinance, against certain coolies for desertion. The Magistrate (*Reid*) held as follows:—"I have read over the evidence of the complainant to him, after taking it down, so that there may be no mistake in my notes, as the system described by him seems unusual and oppressive. The accused is charged with deserting from the service of Mr. Pineo on Berogalla Estate, without giving notice or without reasonable cause; but the only witness called swears distinctly that Mr. Pineo does not accept notice from the coolies on this estate. This seems a very serious state of affairs and very unreasonable conduct, as Mr. Pineo must have been aware of this when complainant (Davidson) swore the affidavit before himself, charging these coolies with this offence against himself, and complainant knowing he did not accept notice. Mr. Pineo is not present. Again, in the absence of a written contract, notice should be accepted at any time. Under these circumstances, I think it must be a serious matter for coolies to obtain leave from the Berogalla Estate. If this accused was in Mr. Pineo's service, as stated in the plaint

and in the affidavit, I cannot understand his not receiving notice from him. Clause 3 of Ordinance 11 of 1865 requires notice from either party. I do not see sufficient ground for convicting accused of leaving the Estate without notice or reasonable cause, and he is therefore discharged. This accused and others were brought on a warrant from Nuwara Eliya. As I understand there are many deserters, and that there is difficulty in procuring coolies, I do not decree accused any compensation, though he is entitled to it. It might have a serious effect on others. Complainant, through his Proctor Mr. Keyt, gives notice of appeal, so the accused is detained in custody. Mr. Keyt, for complainant, submits that accused's statement 'I did leave the Estate to see my brother and was arrested coming back' is not taken down. It is quite true that accused made this statement, after the case for prosecution was closed, but I did not think it necessary to take it down."

In appeal, (*Brown* for appellant) the judgment was affirmed:— and per CREASY, C. J.—"This was a charge, under the Labour Ordinance 11 of 1865, against the defendant for leaving the service of R. E. Pineo, Esq. on Berogalla Coffee Estate, without notice or reasonable cause. I consider the Police Magistrate to have found that the fact of the defendant having left the Estate without notice has not been sufficiently proved: and I might at once affirm the judgment on this ground only, as being a decision on a question of fact, but I think it desirable to go more fully into the case, inasmuch as the Police Magistrate's words as to finding on mere fact are not absolutely unambiguous, and also because there are some strange circumstances in the case. I may remark also that the petition of appeal is drawn in an unusual style of vehemence, and it is my duty to notice and censure the grossly improper and illegal course which has been taken of publishing through the press, while the appeal was pending, a letter written in a tone of violent partisanship against the judgment of the Police Magistrate. The sole witness in the case was the complainant and appellant, Mr. Davidson, the Superintendent of the Estate. I will read his evidence.

'I am Superintendent of Berogalla Estate. The defendant was employed on that Estate as a cooly, and he left in February last. I produce my Check Roll, from which it appears this man, Mardun, left in February. When a man wants to leave the Estate, he must come himself and give his name at the beginning of a month, if he wants to leave at the end of the month. We accept notice only at the end of the month. The coolies know this. If a cooly comes about the middle of a month, say the 15th of a month, and gives notice that he wants to leave within a month from that date, such notice is not accepted until the beginning of the following month. This is the rule so long as I have been on that Estate. It was the rule made by Mr. Pineo, I think. It is the rule Mr. Pineo insists on. If a cooly wants to leave the Berogalla Estate, he must give notice to me and not to Mr. Pineo. This man gave me no notice, or else it would be put down in the Check Roll.'

Cross-examined by Police Magistrate.—'I can swear that accused did not give me notice. I understand Tamil tolerably well. I have been in this country over 15 months. Accused is in my service. I am in charge of Berogalla Estate and accused is a Berogalla cooly, so I think he is in my service. I never pay the coolies on that Estate. Mr. Pineo pays them. I am under Mr. Pineo: he is my Peria Dora. I swore this affidavit before Mr. Pineo himself as J. P., charging these coolies with leaving his service. Mr. Pineo pays his coolies once in two months or so. Mr. Pineo goes to the Estate, sometimes once a week, and sometimes once a month Mr. Pineo does not receive notice from the coolies on the Estate. He tells them to come and tell me.'

Cross-examined by accused. No question; says 'I am willing to return to the Estate.' Complainant adds, 'This cooly met with an accident and was sent to Dr. Moss and paid and provided for until he got better, and as he is ungrateful I do not wish him to come back to the Estate but want him punished.'

"Mr. Davidson, in his appeal, asserts that the Police Magistrate was in error in making allusion to the 3rd clause of the Ordinance 11 of 1865 in his judgment, 'for that had no bearing on the case.' On the contrary, the 3rd clause is all in all important for the correct decision of the case. The 3rd clause, especially when read in connexion with the 4th, shews clearly that a cooly can, at any time and on any day of his monthly service, give a valid notice of his intention to leave 'at the expiry of a month from the day of giving such notice.' If he does not leave before the end of that term of warning, he is not punishable under the 11th section as a deserter. Mr. Davidson says that it is a rule on Berogalla Estate to accept no notice from coolies which is not given at the beginning of a month. He also states that Mr. Pineo does not accept notices from coolies on this Estate, but that notice must be given to him, Mr. Davidson, the Superintendent,—although the prisoner is described in these proceedings as being in the service of Mr. Pineo, who pays the coolies, who comes to the Estate sometimes once a week, and sometimes once a month, and of whom Mr. Davidson says,' I am under Mr. Pineo, he is my Peria Dora.' The obvious answer to all this code of Berogalla rules is, that Mr. Pineo and Mr. Davidson have no authority to alter the law of the land. A notice given to either of them by a cooly, at any period of the month, is a good notice, whether Mr. Pineo or Mr. Davidson think fit to receive such notice or not. The Police Magistrate had to determine, not what Mr. Pineo or Mr. Davidson thought fit to accept, but whether it was sufficiently proved before him that the cooly went away without having given a month's notice to either Mr. Pineo or Mr. Davidson. In default of Mr. Pineo appearing to give evidence on the subject, though Mr. Pineo was evidently in the neighbourhood, and though he was evidently aware of the proceedings inasmuch as he had (very improperly) signed the warrant for his own servant's, this cooly's, apprehension, the Police Magistrate was quite right in holding the evidence insufficient. The complainant, in his peti-

tion of appeal, endeavours to make up for the defects in the evidence against the prisoner by supposed admissions of the prisoner during trial. During the proceedings, the prisoner said 'I am willing to return to the Estate.' The appellant somewhat oddly asserts that this statement was a *tacit* admission of guilt. I do not think that it was anything of the kind. Finally, the appellant asserts that 'when defendant was called on to make a statement, he admitted that he left the Estate without notice or reasonable cause." To support this assertion nothing appears on the record, except an entry that the accused made this statement 'I did leave the Estate to see my brother and was arrested coming back.' There is not a syllable here about leaving without notice. The appellant concludes his petition with remarks about the importance of upholding the Laborers' Ordinance. Unquestionably it ought to be upheld. It is a very salutary enactment, and was framed with great care and consideration. But it is a very different matter to uphold alterations and additions which individual proprietors may think fit to introduce for their own convenience. This it is which the Police Magistrate has refused to do in the present case, and in so refusing he has acted quite rightly."

Toll.

P. C. Tangalla, 34965. The defendant was charged with having evaded payment of toll, by driving in a hackery from Tangalla to Sinimodera, crossing the toll-station at the latter place on foot, and using another hackery on the other side. *In appeal*, against a conviction, *Grenier* for appellant quoted the judgment of the Appellate Court in P. C. Balepitimodera, 28,118,* and invited attention to the evidence (not expressly disbelieved by the Magistrate) of one of the witnesses for the defence, who proved that he had offered a seat in his own hackery to the accused, who was journeying homewards on foot, and that the offer had been accepted. Per CREASY C. J.—"Set aside. The Police Magistrate does not state that he disbelieves Dines Hamy's evidence, which completely negatives the idea of an intent to evade the toll."

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* PER CURIAM.—"The defendant is charged with evading the payment of Toll, in breach of the 17th clause of the Ordinance No. 22 of 1861. The evidence shows that the defendant, who is a clerk in the Ballepitty Court, drove his Hackery up to about 10 or 15 fathoms from the toll-bar; that there he got down, without paying toll, walked over the bridge to the Court House which is close by; and in the afternoon that he re-crossed the bridge to the spot where he had left his vehicle and drove home. The Magistrate was of opinion that the charge was not maintainable, and we think the dismissal correct. The tolls imposed by the Ordinance are expressly declared, by the 4th clause, 'to be levied in respect of the roads, bridges, ferries and canals specified in the schedules A, B, C and D.' The bridge at Ballepitty is included in schedule B. But it is admitted that the vehicle passed neither bridge nor toll bar. The first portion of the 17th clause is inapplicable. The latter part, within the operation of which it is sought to bring this charge, enacts 'that if any person shall do any other act whatsoever in order to evade the payment of any toll,

False and frivolous charge.

P. C. Galle, 84118. Held that a Magistrate was competent to punish a complainant at the close of the trial for having brought a false and frivolous charge, and was not bound to adjourn the adjudication unless special application for time were made. The finding and sentence would be sufficiently regular, if the party were formally called upon to shew cause.

May 2.

Present STEWART, J.

P. C. Navalapitia, 17943. In this case a Toll Renter had been convicted of levying toll on certain Carts conveying muriate of potash. *In appeal* (*Grenier* for appellant) the Magistrate's judgment was affirmed; and per STEWART, J.—"The muriate of potash was being conveyed to be used as manure for land, and as such is exempt from toll. This substance is obtained from burning vegetables, and though it contains saline properties, cannot be deemed salt in the popular and general signification of that word within the meaning of the Ordinance."

Appeal rejected.

P. C. Galle, 83630. The appeal lodged in this case was rejected in the following terms. "There is no provision in the Rules for the Police Courts for allowing an appeal which has been lodged after the time prescribed. There is, besides, in the present case a delay of more than six weeks."

May 6.

Present STEWART, J.

Labor Ordinance.

P. C. Panwilla, 14322. The defendants were charged with having wilfully and knowingly seduced from the service of complainant (*Macartney*) certain coolies who were bound by contract to serve him. *In appeal* against a conviction, (*Brown* for appellants) STEWART, J. delivered the following judgment which fully sets out the facts of the case.—"Affirmed. The defendants are charged with seducing from the service of the complainant certain labourers, who were bound by contract to serve the complainant, in breach of the 19th clause of the Ordinance No. 11 of 1865. According to the evidence, the labourers

and whereby the same shall be evaded, shall be guilty of an offence.' The above provision is similar to that in sec. 41 of 3 Geo 4, c. 126. In the Statute, however, in addition to the restrictions contained in the preceding portion of the 17th clause, there is the following passage, 'or shall leave upon the said road any horse, cattle, beast or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened'—words not occurring in our Ordinance. Further, the 19th clause prohibits goods brought upon any animal or vehicle to any bridge, &c., to be transferred from one side thereof to the opposite. There is no provision, however, affecting such an act as the one now complained of, and consequently it may fairly be held that the present is a case in which the rule of construction, *expressio unius est exclusio alterius*, should be allowed to prevail." *Civ. Min.*, April 4, 1865.

referred to had not actually entered the service of the complainant but were on their way to his estate from Kornegalle, when they were met by the defendants (who were at the time employed on the complainant's estate) a short distance from their destination and induced by them, on false pretences, to take service on another estate in the neighbourhood. It appears that on the 29th January two men, Sangalingem and Caderwalo, came to the complainant to 'offer labour,' *i e.* they offered to bring coolies to the complainant's estate, and asked the complainant an advance of Rs. 120 for that purpose. A cheque for that amount was given by the complainant, and a receipt granted by the men in exchange. But shortly after, it occurring to the complainant that there might be some difficulty about his eventually getting the coolies, the cheque was returned to him, he however being allowed to retain the receipt. The arrangement did not end here, the Kanacapulle (2nd witness) being directed by the complainant to pay the two men Rs. 30, the complainant promising to return the money afterwards. It is proved that this money was paid to the two men through the 3rd defendant. Accordingly, the former proceeded to Kornegalle, obtained the coolies, gave them advances out of the Rs. 30, engaging them to go to Leangolla, complainant's estate. On the above facts, it has been urged, on behalf of the appellants, that there was no binding agreement between the coolies and the complainant, that the return of the cheque shows that the complainant withdrew from the agreement, and further, even allowing that he still continued a party to it, that the contract was incomplete being only executory. It appears to the Supreme Court that, though the complainant received back the cheque, he did so merely in prudence, and that this does not materially alter the aspect of the case. That there could have been no intention to abandon the agreement is evidenced, not only by the complainant's being allowed by the two men to retain their receipt, but also by Rs. 30 having been advanced to them on complainant's account and for the same purpose, payments out of which money are proved to have been made to the coolies for their expenses to carry them to Leangolla. The Ordinance contemplates two kinds of contracts—a verbal contract of service under the 3rd clause, and, secondly, written contracts under the 7th and 8th clauses. There was no written contract in the case ; but, as a verbal contract entered into by the coolies with the complainant's agents, it was a good contract for a monthly service within the meaning of the 3rd clause, rendering the coolies who entered into it bound to serve the complainant."

May 16.

Present STEWART, J.

P. C. Batticaloa, 5822. The defendant (who had previously been acquitted in case No. 5554, reported in page 21) was charged "with having unlawfully drawn toddy, without having first obtained the permit

Arrack Ordinance.

required by law, which is an offence punishable by clauses 39 and 40 of Ordinance No. 10 of 1844." The Magistrate (*Worthington*) held as follows: "The Court cannot hold that the license referred to (from the tavern-keeper) was sufficient, since the grantor was neither the Government Agent, nor 'some person authorized in writing under his hand to grant such permit,' nor 'the licensed retail dealer in toddy for the (whole) district'; and, therefore, since there is trustworthy evidence to prove the drawing of toddy by defendant, a conviction must follow. But on considering what punishment is to be imposed, the Court is also bound to take into account the fact, also brought out to its satisfaction, viz., that practically the local retailers of arrack and toddy have been recognized, for several years past at least, as the persons entitled to issue licenses for drawing toddy, and that defendant evidently acted bonâ-fide considering he had a right to draw under such a license. Defendant found guilty and fined R 1. *In appeal*, per STEWART, J.—"Set aside. The 'licensed retail dealer in toddy for the district within with such palm shall be situated,' referred to in the 39th section of the Ordinance 10 of 1844, must, under the circumstances, be taken to be the person licensed to retail toddy under the 38th section. Unless this is the retail dealer meant, there is no other person connected with the practical working of the Ordinance to whom the above quoted words would apply. The license produced, marked C, is in the form prescribed by the 38th section; and it would also appear that the trees from which toddy was drawn are situated in the district and village where the witness Gabriel Santiagopulle has a license to keep a tavern as therein stated and to retail toddy. The permit D, under which the defendant drew the toddy, is admitted to have been issued by the licensed retail dealer Gabriel Santiagopulle."

False information.

P. C. Galle, 84032. The defendant was charged with having given false information to a Justice of the Peace, with intent to support a false accusation. Defendant had instituted a case 15475, J. P. Galle, against the complainant and others, for cattle stealing, but had subsequently withdrawn it. He was convicted. *In appeal*, *Dias*, for appellant, submitted that the defendant's knowledge of the falsity of the accusation should have been clearly shewn, and that complainant should not have merely relied on the fact of the withdrawal as proving such knowledge. Per STEWART, J.—"Affirmed."

Counter cases.

P. C. Panadure, 20919. The defendant was charged with assault. The Magistrate (*Morgan*) held as follows: "This is a case of assault brought against the Police Serjeant, who, complainant alleges, pushed him first into the Police Station and then into the room. On reference to the case No. 20918 of this Court, it will be seen why complainant was pushed into the Station house. Defendant is acquitted and

discharged." *Ferdinands*, for appellant, submitted that the effect of the proceedings in the Police Court had been to give the accused the advantage of his own examination on oath, and that it was irregular to have put in evidence under the present charge the depositions in the counter case.* But STEWART, J. affirmed the judgment, remarking that the complainant could not raise such an objection as, when he was defendant in the counter case, he had full opportunity of cross-examining his adversary's witnesses.

Toll.

P. C. Tangalla, 35239. The question in this case was whether, under the Toll Ordinance of 1867, bullocks which were tied behind a cart could be charged for as "additional oxen attached thereto." The Magistrate (*Campbell*) held as follows: "The accused (toll-renter) is adjudged guilty and fined Rs. 50. It is clear that the toll-keeper was wrong in making the increased demand, because although it is admitted that the animals were tied behind they were not additional and did not contribute to the drawing power through the toll. The defendant could only have been justified in making the demand, had the four bullocks been yoked to the cart at the time of passing through." *In appeal*, (*Grenier* for appellant) per STEWART, J. —"Affirmed, for the reasons given by the Magistrate."

Arrack Ordinance.

P. C. Batticaloa, 5866. The defendant was charged under Ordinances 10 of 1844 and 8 of 1869 with having (1) sold arrack without a license and (2) sold less than one gallon of arrack for Rs. 1.34, contrary to the tenor of the license held by two retail-dealers, who were his employers. The license itself was not produced at the trial, but the Magistrate held that the evidence established that the quantity sold was short by one gill, and sentenced the accused to three months' hard labor. *In appeal*, (*Dias* and *Grenier* for appellant, *Clarence* for respondent,) the judgment was set aside and case remanded for further hearing; and per STEWART, J.—"There has been no distinct finding upon either of the two counts in the plaint, though it would appear from the terms of the judgment that the intention of the Magistrate was to find the defendant guilty upon the second count. To sustain, however, a conviction upon the second count, viz: that the defendant sold arrack contrary to the tenor of his license, the license itself should have been produced or its absence duly accounted for."

May 23.

Present CREASY, C. J. and STEWART, J.

Commutation Rate.

P. C. Newera Eliya, 8825. The plaint was "that the defendants did not pay poll-tax for the year 1872, in breach of the 63rd clause of the Ordinance No. 10 of 1861." The Magistrate (*Hartshorne*)

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* A counter charge by defendant against complainant for being drunk and disorderly.

found the accused guilty and sentenced them to six days' imprisonment at hard labor. *In appeal*, (*Grenier* for appellant) the conviction was set aside and case dismissed; and per CREASY, C. J.—"The plaint does not set out any offence under the 63rd or 64th clause of the Ordinance referred to, nor is there evidence of any offence."

Maintenance. *P. C. Batticaloa*, 5768. The defendant was charged with not maintaining his family. He pleaded a divorce, under the Mohamedan law, in respect of his alleged liability to support his wife, and led evidence; but the Magistrate (*Worthington*) held the plea not proved and convicted him. *In appeal* (*Grenier* for appellant) per STEWART, J.—"The judgment of the 31st day of March, 1873, is set aside, and altered as to so much thereof as finds the defendant guilty of not maintaining the complainant. The sentence is affirmed as regards the charge against the defendant for not maintaining the child. The appeal is only as regards the conviction of the defendant for not maintaining the complainant. The Police Magistrate seems to have considered that the alleged divorce was not made out, inasmuch as there was 'an absence of proof of either of the delivery of the 3 tollocks to complainant, as required by the Regulation of 1806, clause 87, or of the knowledge of complainant that the 3 tollocks had been written.' The evidence establishes that 3 tollocks were written and issued at the intervals required by the Mohamedan Code. One of these notices is not forthcoming, but this is immaterial, there being proof of that notice as well as of its subsequent loss. Though there was no actual delivery of the tollocks into the hands of the complainant, the evidence shews that the Priest went to the complainant's house, and that when he began to read out the document the complainant ran away. It is manifest that she was aware of the proceedings that were being taken, and that it was owing to herself that the Priest did not more formally communicate the divorce to her. Another witness says on this point that the complainant 'concealed herself.' The Magistrate remarks 'it may be true, doubtless is so, that the complainant may have become aware of the divorce.' Under the circumstances appearing in the evidence, the Supreme Court thinks the complainant was legally divorced by the defendant."

May 30.

Present CREASY, C. J. and STEWART, J.

Fine reduced. *P. C. Galle*, 84654. The defendant was charged with having resisted and obstructed the complainant (the Deputy Fiscal) in the execution of his duty, in breach of clause 239 of Ordinance 4 of 1867. The Magistrate (*Lee*) held the defendant guilty merely of assault and fined him Rs. 10. *In appeal*, per CREASY, C. J.—"Affirmed as to judgment of guilty of assault but fine reduced to 50 cents. The Police Magistrate seems to us to have rightly held both that the com-

plainant was not acting in the execution of his duty, and that there was an assault, inasmuch as the defendant was clearly not acting in defence of his property. But the assault is a mere nominal one, and the fine ought therefore to be nominal and not substantial."

Prisons Ordinance.

P. C. Galle, 84824. The plaint was as follows: "that the defendants, being officers of the Galle prison, did, on the 13th May, fail to exercise a proper vigilance over the prisoners committed to their charge, in breach of Ordinance 18 of 1844, clause 20; and that the defendants, being officers employed as aforesaid, did wilfully neglect the rules of such prison in that they did absent themselves from a working party of prisoners entrusted to them for custody, on the day aforesaid, in breach of the clause of the Ordinance aforesaid." The defendants were found guilty, under the first count, and sentenced each to one month's hard labor. *In appeal*, the judgment was affirmed; and per STEWART, J.—"Though there were other peons, the defendants had no right to leave without permission duly obtained."

Appeal postponed on affidavits.

P. C. Kalutara, 48342. A Mohamedan husband was charged with not maintaining his wife, a Singhalese woman. The defendant denied the alleged marriage; but he was convicted and sentenced to fourteen days' hard labor. *In appeal, Kelly*, (*Grenier* with him,) for appellant, submitted two affidavits,—one from the defendant impugning the Kadutam produced at the trial as a forged document, and another from his Proctor (*Hepponstall*) to the effect that the Magistrate had, subsequent to his judgment, declined to entertain a charge of forgery preferred by the defendant; that he (the Proctor) had examined the defendant's witnesses; and that, to the best of his knowledge and belief, his client had a good case. On these affidavits, Counsel requested that the Appellate Court might not deal with the finding until the result of the proposed J. P. investigation was known. *Ferdinands*, for respondent, urged that the course suggested was unusual; and that, if the defendant had really been taken by surprise, the Supreme Court might perhaps have been induced to give him a further hearing. But the record shewed that the case had been once postponed, in consequence of the non-production of the Kadutam in question, and that a warrant had issued to the priest in charge of the document. [The evidence being legally sufficient, if true, I doubt whether the Supreme Court has the power to remand the case.—C. J.] To allow the defendant to institute proceedings for forgery against complainant and her witnesses, would be giving a convicted defendant an advantage over a complainant who had proved her case. Per CREASY, C. J.—Let the case stand over for three weeks. The appellant should either prove the charge of forgery or stand his trial before the Supreme Court for perjury. In the event of his proving his case, we shall affirm the Magistrate's finding on facts, as we are bound to do, but the Governor may be induced to grant a free pardon.

June 6.

Present CREASY, C. J. and STEWART, J.

Cattle trespass.

P. C. Panwilla, 14330. This was a charge of cattle trespass under the 3rd clause of Ordinance No. 2 of 1835, the complainant claiming damages to the amount of Rs. 100. The Magistrate, (*Smart*) after hearing the evidence for the prosecution, struck off the case, holding that he had no jurisdiction. *In appeal*, (*Kelly* for appellant) the judgment was set aside, and defendant adjudged to pay complainant Rs. 95 as damages; and per STEWART, J.—"The Ordinance No. 5 of 1849 authorized Police Courts to award any damages and impose any fines as fully and effectually to all intents and purposes as the District Courts could or might have had; and this Ordinance further enacts that 'the several District Courts shall cease to have and exercise the powers, jurisdiction and authority vested in them by the said Ordinance No. 2 of 1835.' The Police Court has therefore jurisdiction to deal with the case. The ownership of the goats is established by the complainant, as well as by the Aratchy who proves that the defendant claimed the goats. The Rs. 5 paid to Mr. Wylie is deducted from the Rs. 100 claimed as damages."

Gambling.

P. C. Kalutara, 48654. The plaint, as filed on the 28th of February, 1872, charged the defendant with having gambled on the 20th November, 1872, in breach of the Vagrant Ordinance. It appeared that a previous case had been instituted in time against the defendant, but that the prosecution had lapsed for some reason or another; and this circumstance had apparently been considered by the complainant as having interrupted Prescription, which was pleaded by the accused for the first time in his petition of appeal. *In appeal*, against a conviction, the judgment of the Magistrate (*Jayetileke*) was set aside, and per CREASY, C. J.—"This plaint is bad on the face of it as not instituted in proper time."

June 17.

Present CREASY, C. J. and STEWART, J.

Theft.

P. C. Galle, 85020. The defendant was charged with having stolen a sum of Rs. 25, from the drawer of the Head Clerk's table at the Galle Police Station. It was proved that the accused was an office orderly; that he had access to the Clerk's room; and that, after the detection of the theft, a key was found in his haversack which opened and shut the drawer in question. The Magistrate (*Lee*) held as follows: "the possession of the key in my opinion fixes the guilt of the accused." *In appeal*, (*Grenier* for appellant) per CREASY, C. J.—"Set aside and judgment of not guilty to be entered. There is such a want of evidence in this case, that a judge would not have left it to a jury; and it is therefore competent to the Supreme Court to reverse the Police Magistrate's finding."

June 24.

Present CREASY, C. J. and STEWART, J.

P. C. Colombo, 7263. The defendant was charged with assault. The Magistrate (*Fisher*) held as follows. "The accused is acquitted. I disbelieve the case. Both parties to give bail, in Rs. 50 each, to be of good behaviour for three months." *In appeal*, by the complainant, the order as to bail was set aside; and per CREASY, C. J.—"The 104th clause of Ordinance 11 of 1868 gives Police Magistrates a discretionary power to bind over to keep the peace 'where he shall be satisfied that the ends of justice will be sufficiently met' by such a course. That is to say, he may, if he thinks fit, do so in cases where he finds that no law has been broken, or that there is reason to apprehend a breach of the law; and he should find expressly that such is the case before he proceeds to bind over. But in a matter like the present, where he adjudicates that he wholly disbelieves the case brought before him, and does not find that there are circumstances which make it proper to bind the parties or either of them over to keep the peace, he has no authority in his capacity of Police Magistrate to do so." Bail for good behaviour.

June 27.

Present CREASY, C. J. and STEWART, J.

P. C. Kalutara, 48342. On this case (which is reported in page 49) being called this day, the Chief Justice delivered the following judgment. "Affirmed. This case, as it came before us, was simply an appeal as to facts, and in the regular course the judgment of the Police Magistrate would at once have been affirmed by us, as being one which we have no authority to set aside. But the facts were peculiar. The Police Magistrate had sentenced the appellant to imprisonment with hard labor for 14 days. The defendant had been allowed to stand out on bail pending the appeal, and consequently the execution of the sentence was deferred until we should have affirmed it. When the case came before us, the appellant put in a positive affidavit of his own, supported by another affidavit, that a document, on which the case against him was to a great extent based, was a forgery, and that the case against him was got up by means of conspiracy and forgery. He prayed us to pause, so as to give him time to institute criminal proceedings against his guilty accusers. Had the sentence been one of fine, we should have proceeded to affirm the conviction; inasmuch as compensation can be obtained for having had to pay a fine wrongfully. But the actual undergoing of imprisonment and hard labor may be, especially to a man in the defendant's rank of life, a permanent stigma and injury, such as no money payment can compensate a man for, in the event of his innocence being demonstrated by his obtaining a conviction of his accusers for forgery Maintenance.

perjury and conspiracy. We therefore directed this Police Court appeal to stand over, so as to give the appellant an opportunity of bringing before a Justice of the Peace his charges against his accusers, so as to put them on trial if the Justice of the Peace or the Queen's Advocate should think it fitting. His charge has been pressed,—his witnesses have been heard before a Justice of the Peace,—and the proceedings have been laid before the Crown Officers. It is now reported officially to us that the Justice of the Peace disbelieves the appellant and his witnesses, and has refused to commit the parties charged by the appellant; and also that the Queen's Advocate sees no cause to interfere with the decision at which the Justice of the Peace has arrived. Under these circumstances, it is our bounden duty to dispose at once of the appeal, which we do by affirming the judgment of the Police Magistrate as based on full legal evidence."

July 1.

Present CREASY, C. J. and STEWART, J.

Gambling. *P. C. Panadure*, 21181. The defendant was charged, under the 19th clause of Ordinance No. 4 of 1841, with keeping a house for the purpose of common and promiscuous gaming. The Magistrate (*Morgan*,) who had the authority of the Queen's Advocate to try the case, found the defendant guilty and sentenced him to six weeks' imprisonment at hard labor. *In appeal*, by complainant, *Dias*, for appellant, contended that the Magistrate was bound to inflict the full penalty prescribed for the offence, as had been held in P C. Colombo, 5400, Grenier's Reports, 1873, p. 23. Per CREASY, C. J.—"Affirmed. Clause 99 of Ordinance 11 of 1868 is to be read in conjunction with clause 95."

Labor Ordinance. *P. C. Kandy*, 94293. The defendant was charged, under clause 11 of Ordinance 11 of 1865, with having left the service of the complainant, to whom he was bound under a written contract stipulating service for twelve months. The Magistrate (*Stewart*) held as follows: "By the Ordinance every contract or engagement, when the service is for a longer period than one month, should not only be in writing but should also be signed before a Police Magistrate or Justice of the Peace. This contract was not so signed. Defendant is found not guilty." *In appeal*, per CREASY, C. J.—"Affirmed. The 7th clause of the Ordinance distinctly exempts such a servant from the operation of the 11th clause."

Labor Ordinance. *P. C. Matara*, 72024. The plaint was "that the said defendant did, on the 7th June, at Ellewelle within the jurisdiction of this Court, without any reasonable cause, grossly neglect his duty and quit the service of the complainant without leave, in breach of the 11th clause

of Ordinance 11 of 1865." The Magistrate (*Jumeaux*) found the accused guilty and sentenced him to one month's hard labor. *In appeal*, per CREASY, C. J.—"Judgment set aside and judgment of not guilty to be entered. The real charge intended in this case is a charge of a servant under the Laborer's Ordinance quitting service without leave or reasonable cause, and without a proper term of notice to quit having expired. The plaint does not state the defendant to have been a servant; and it says nothing about the want of notice to quit. If the evidence had shown a clear case against the defendant on the merits, we would not have reversed the judgment for errors of law which might have been amended. But to our mind, the evidence shows a case of great suspicion and hardship, in which we shall not interpose to cure the complainant's legal blunders. It is desirable for us to explain that we cannot admit the objection founded on the defendant's minority,* though the fact of his being a mere boy is to be considered in other matters. Nothwithstanding the vague assertions of two of the witnesses that the defendant knew of the bargain between the complainant and the old cangany, the distinct facts seem to show at least a strong probability that the old cangany sold the boy's services to the complainant for the benefit of the old cangany and the complainant only. The complainant's claim to detain the boy on account of the money paid to the old cangany is monstrous. We consider that we are at full liberty to review the facts of the case, in order to see if it is one in which we should have sanctioned an amendment of the plaint. We should not have sanctioned an amendment in the present case, and without an amendment the plaint does not warrant the judgment."

False information.

P. C. Colombo, 4861. This was a charge, under the 166th clause of Ordinance 11 of 1865, of having given false information to a Justice of the Peace. The sole evidence in the case was that of the complainants. The Magistrate (*Fisher*) acquitted the defendant in the following terms: "I am inclined to believe that the information given to the Justice of the Peace was false, but in the absence of any corroborative evidence of the statements of the complainants I acquit the accused." *In appeal*, (*Grenier* for appellant) per CREASY, C. J.—"Set aside and case sent back for further consideration and also for further hearing and evidence, if they are thought by the Police Magistrate to be desirable. The Police Magistrate seems to think that evidence corroborative of the complainants' is necessary in point of law. No such legal necessity for it exists, but the absence of it may be a fair matter for the Police Magistrate to bear in mind when he is considering the case as a question of fact. It seems doubtful from the record whether the defence has been gone into. If this has not been

* It was contended in the Court below that the accused was a mere boy and as such could not enter into a contract under the Labor Ordinance.

done, the defendant must of course have an opportunity of being heard and of his witnesses being examined before any judgment is entered against him."

Maintenance. *P. C. Tangalla*, 35397. This was a charge against defendant for not maintaining his illegitimate child On the sole evidence of the complainant, (the mother) who was believed by the Magistrate, the accused was found guilty and fined Rs. 10. *In appeal, Grenier*, for appellant, contended that there was insufficient evidence to go to a jury, and that it would be a dangerous precedent to allow a complainant to father her child on any accused party without some corroborative proof of her statements. Sed per STEWART, J.—"Affirmed. The evidence of the complainant was legally admissible, she not being the lawful wife of the accused."

July 8.

Present CREASY, C. J. and STEWART, J.

Cattle trespass. *P. C. Gampola*, 24577. The defendant was charged, under clause 4 of Ordinance 2 of 1835, with having allowed two head of cattle belonging to him to trespass on a Coffee Estate in charge of complainant. The cattle had not been seized but merely identified ; and there appeared to have been no assessment of damages as contemplated in the Ordinance. The Magistrate (*Penney*) found the accused guilty and fined him Rs. 10. *In appeal, Cooke*, for the appellant, quoted the judgment of the Appellate Court in P. C. Matale, 23709, 2 B, 74, which was to the following effect: "the requirements of the Ordinance not having been strictly complied with, inasmuch as no notice was given to the principal headman of the village or district, and no report made as required by the 3rd clause of the Ordinance No. 2 of 1835, the dismissal must be affirmed, but the complainant has his civil remedy for damages." This was a similar case, and the conviction must therefore be set aside. [But under the clause specified in the plaint, a criminal prosecution for trespass may be maintained 'whether any damage shall be proved to have been sustained or not.' STEWART J.] There was besides no proof that the estate was fenced or that by any local custom it did not require to be fenced. [You will find a case reported in Lorenz, * in which we held that Coffee Estates need not be fenced to entitle the owner to the benefit of the Cattle Trespass Ordinance.—C. J.] Per STEWART, J.—Affirmed.

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* *P. C. Matale*, 11998. PER CURIAM—"The Supreme Court is of opinion that the evidence already adduced on this point" (as to how far Coffee Estates are required to be fenced by local custom with reference to clause 2 of Ordinance 2 of 1835) "tends to show that Coffee Estates do not fall within the class of lands alluded to by the witnesses under the term 'cultivated lands,' which seems to designate a class of lands other than Coffee Estates, and shows that according to existing custom Coffee Estates are not fenced as ordinary ground." III Lor., 21 ; Civ, Min., Feb. 19, 1858.

July 15.

Present STEWART, J.

Thoroughfares Ordinance.

P. C. Mallakam, 1440. The plaint was as follows: "that the defendants did unlawfully, wilfully and maliciously prevent, obstruct and hinder the complainant from digging up and removing coral stones from the Crown land called "Tannyerincham", for the public use, at the direction of the Government Engineer, in breach of Ordinance 10 of 1861, clauses 72 and 83." The complainant was a mason in the employ of the public works department, and was engaged in building a house for the sub-collector of Kangasantorre. On his proceeding with a number of coolies to quarry coral in a certain land which had been pointed out to him as Crown property by an Udear, the defendants resisted him claiming the land as their own. The Magistrate (*Murray*) having convicted the defendants fined them each Rs. 30. *In appeal*, per STEWART, J.—"Set aside. The 72nd and 73rd sections of the Ordinance 10 of 1861, under which the defendants are charged, have reference to materials, etc. taken for making or repairing thoroughfares or buildings, etc. required in connection with making and repairing thoroughfares. According to the evidence of the complainant, the coral stones in question were required for no such purpose, but for the erection of a house for the Sub-Collector of Kangasantorre."

July 17.

Present STEWART, J.

Licensing Ordinance.

P. C. Kandy, 94852. The defendant was charged with having sold or exposed for sale, by retail, arrack in his tavern, contrary to the provisions of the 37th clause of Ordinance 7 of 1873. The Magistrate (*Stewart*) held as follows:—"Defendant's Proctor does not deny the fact of sale, but only contends that arrack is not comprehended in the words 'intoxicating liquor' used in the Ordinance. The Court thinks it is and defendant is fined Rs. 10." *In appeal*, (*Ferdinands* for appellant) per STEWART, J.—"The accused is charged with selling arrack at his tavern after eight o'clock, in breach of the 37th clause of the Ordinance 7 of 1873, which enacts that 'all premises, 'excepting bona fide hotels, in which intoxicating liquor is sold or 'exposed for sale by retail, shall be closed after the hour of eight 'at night, &c." By the interpretation clause of the Ordinance, arrack 'the produce of the cocoanut palm, is excluded from the meaning given to the expression 'intoxicating liquor.' It will also be seen, on reference to the 12th, 14th, 15th and several other clauses, that where it is intended that arrack shall be comprised in any prohibition, the words 'including such produce as aforesaid' are expressly inserted. These words do not occur in the 37th clause under which the charge is laid."

July 22.

Present STEWART, J.

Bribing the Police.

P. C. Colombo, 6942. The plaint was as follows: "that the defendant did, on the 2nd day of April, 1873, at Colombo, tender a bribe of Rs. 35 and one silver chain, of the value of Rs. 50, to suppress a criminal charge." It appeared from the evidence that the complainant (a Police Serjeant) had taken up two persons on suspicion that they had stolen some coffee and had put them in stocks at the Galkisse Police Station. The present accused thereafter had tendered the money and chain referred to in the charge; and such tender had been regarded as a direct attempt to bribe. For the defence, it was submitted that the intention of the accused was merely to secure the release of the prisoners, and that there was no proof whatever that the Serjeant had been asked to drop the proposed prosecution. The Magistrate held that he would take such intention for granted and refused to hear evidence to prove it. The defendant was nevertheless convicted.

In appeal, Grenier for appellant. [You are not going to support the contention in the petition of appeal that bribing a police officer is not a common law offence.—STEWART, J.] The Supreme Court had long ago distinctly ruled that it was.—P. C. Urugala, 2387, Dec. 1, 1870. In the present case, however, the charge (between which and the finding there was a fatal variance) could not be sustained. The money and chain had been offered as security for the discharge of the suspected thieves; and as the complainant had the power under the Ordinance to accept bail, the offer had been perfectly legitimate. [But the Magistrate holds that a present was intended.—STEWART, J.] He incorrectly assumed that that was our object and refused to hear our evidence. It was a matter of frequent occurrence in the Fiscal's office that deposits of jewelry and other articles were made as security for the payment of fines and penalties; and such depositors could no more be charged with bribery than the defendant could be in this case. [I should like to have an affidavit to shew that you had evidence at the trial to indicate that defendant intended to offer security and not to tempt the complainant with a gift.—STEWART, J.]

On reading the affidavit called for, Justice STEWART delivered judgment as follows: "Set aside and case remanded for further hearing. The Magistrate's decision is quite right on the facts before him. But having regard to the affidavit adduced by the appellant, the case is remanded for further hearing in order that the defendant's witnesses should be heard. As a general rule the evidence tendered by the accused, though in the opinion of the Magistrate not likely to be of any avail, should be heard."

Evidence.

P. C. Kahutara, 48993. The defendant was charged with having sold arrack by retail without a license, in breach of the 26th section

of Ordinance 10 of 1844. The Magistrate (*Baumgartner*) held as follows: "Though the evidence is not very satisfactory, especially that of complainant's second witness, I believe that accused did sell the arrack in question. He does not deny that he sold it, nor does he make any mention of having a license. He has made no attempt to defend himself by summoning witnesses. Accused is found guilty and sentenced to pay a fine of five pounds." *In appeal* (*Cooke* for appellant) per STEWART, J.—"Set aside and remanded for further hearing and consideration. Having regard to the affidavit filed by the defendant"— (which was to the effect that the summons had been served too late to allow of his securing the attendance of his witnesses) "and to the opinion of the Magistrate that the evidence is not very satisfactory, the case is remanded for further enquiry, when the accused will have another opportunity of adducing his evidence. If the Magistrate is not satisfied with the evidence for the prosecution, the accused should have the benefit of any reasonable doubt."

P. C. Balapitimodara, 44055. The complainant, who was a process server, complained "that the defendants did, on the 2nd instant at Totagamuwa, beat, assault, resist and obstruct the complainant, whilst he was in the execution of his duty under the warrant No. 6565, in breach of the 83rd clause of Ordinance 10 of 1861." The Magistrate (*Halliley*) found the accused guilty of assault under the common law and sentenced each of them to 3 months' hard labor. *In appeal*, per STEWART, J.—"Affirmed. The plaint might have been amended so as to contain a distinct charge of assault. As however the plaint expressly charges an assault, the defect is not such as could have prejudiced the substantial rights of the defendant." Plaint.

P. C. Panwila, 14349. The following judgment of the Magistrate (*Power*) explains the issue in the case. "The question in this case is, was the defendant as the Toll-keeper at Madawella entitled to demand Toll from complainant on his way from Teldeniya to Panwila. The Toll at Madawella is for the road from Katugastotta to Kalibokka, and there is another Toll from the same road beyond Panwila between the 16th and 17th mile posts (see Schedule B. of Ordinance). Now the Teldenia Road falls into the Panwila Road on the Panwila side of the Toll Station by some few yards. Persons or carts therefore do not pass the Bar at Madawella: if coming to Panwila they would have to pay Toll doubtless if they proceeded to Kandy. Navellepittia, No. 1373, B. & V, page 89, is very much to the point. There it was held that as the defendant had turned off a road before he came to the Toll-Bar at Ginegettena and had not passed the Bar, he was not liable to pay Toll; here the complainant has not so much as used any portion of the Panwila Road when he is asked for Toll. There is a Toll.

Toll at Teldeniya for the upkeep of that road, and there is a Toll at the 16th mile post for that portion of Panwila Road between it and Madawella. As the complainant then did not pass any Toll-Bar, I am of opinion he is not bound to pay the Toll; and the defendant, in demanding it, has acted wrongly. He is only entitled to levy Toll on carts &c. travelling on the Katugastotta and Kalibokka road and passing through his Bar. The accused is found guilty and fined one Rupee." *In appeal*, per STEWART, J.—Affirmed.

July 29.

Present STEWART, J.

Arrack Ordinance.

P. C. Negombo, 28636. The defendant was charged, under clause 26 of Ordinance 10 of 1834, with having established a tavern at Andiambalama, whereas his license authorised him to establish one at Walpola. The Magistrate (*Dawson*) acquitted the accused, on the ground that "he had not acted with any guilty intent, but in simple error," and condemned the complainant to pay the expenses of the defendant and his witnesses. *In appeal* (*Brito* for appellant,) per STEWART J.—"Set aside and judgment of guilty to be entered: and it is further ordered that the defendant do pay a fine of 5 cents. The evidence establishes that the defendant sold arrack at a place not authorized by his license; and accordingly, it being proved that he infringed the provisions of the clause of the Ordinance under which the plaint is laid, he should have been convicted; but under the circumstances only a nominal fine need have been imposed. This case is distinguishable from the case No. 16940 in Beling and Vanderstraaten, page 160, which was that of 'an innocent and unconscious possession' on the part of the person charged. In the present case, which is very different, it was the special duty of the defendant to take care that he acted in conformity with the requirements of his license. The order adjudging the complainant and appellant to pay the expenses of the defendant* and witnesses is set aside."

Obstructing thoroughfares.

P. C. Galle, 85082. The defendants were charged with having encroached upon a Thoroughfare, by making ditches across the same, in breach of the 9th section, 94th clause of Ordinance 10 of 1861. The Magistrate (*Lee*) held as follows: "I find that defendants cut ditches across a footpath; that such ditches cause no inconvenience to foot passengers, though they do to carts; and that the thoroughfare is now a cart road but has not been so for more than 16 years.

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* Held in P. C. Panadure, 16539, that "the Ordinance only authorises the Magistrate to award the reasonable expenses of the defendant, and where these exceed a small amount, to be awarded for his charges in going and returning to his village, evidence should be taken as to their nature and amount." *Civ Min.*, Nov. 3, 1870.

Holding, however, that it is essential, prior to conviction, for the prosecution to prove in this case inconvenience to the public in the use of this footway, I find the defendants not guilty. *In appeal*, per STEWART, J.—"Affirmed. There is not sufficient evidence to establish that the road in question can be regarded otherwise than as a footpath. Viewing it as a footpath, no obstruction has been proved."

P. C. Kurunegala, 19778. The defendant was charged with a breach of the 3rd, 4th and 14th clauses of Ordinance 11 of 1865. The Magistrate *(Livera)* held as follows: "The complainant states he was discharged without receiving any notice as required by the 3rd clause, and without being paid an extra month's wages as required by the 4th clause. The two witnesses called by complainant distinctly state that no demand was made for the extra month's wages. One of them further states 'I was satisfied with what I got, and went away.' The petition marked B contains no complaint as to want of notice, etc. I am of opinion, therefore, that complainant and his coolies left the estate perfectly satisfied with the payment of balance wages due to them; that they did not demand at the time the extra month's wages, nor did they complain of want of notice. The defendant is adjudged to be not guilty." *In appeal*, per STEWART J.—"Affirmed. According to the evidence, as adduced by both parties, it would appear that the complainant left the defendant's service by mutual consent."* Labor Ordinance.

August 5.

Present CAYLEY, J.

P. C. Newera Eliya, 8588. The defendant (a cangany) was charged, under the 19th clause of Ordinance 11 of 1865, with having seduced certain coolies from the employ of the prosecutor *(Harper.)* It appeared that on the complaint of the defendant,—that the coolies while under advances to him had been crimped by one of the complainant's canganies, *(Mardasamy)*—his employer *(Anderson)* who was superintendent of a neighbouring estate on which the coolies in ques- Labor Ordinance.

* The rule as to the exemption of coolies from punishment for desertion, on the ground of non-payment of wages, is "to ascertain what was the "exact amount due to each cooly for the number of days during which he "worked for the last month before his desertion, and then to ascertain if "the amount due, after all deductions, was in excess of this sum. The bal-"ance then remaining represented wages due to him before the com-"mencement of the month. If such balance exists, the cooly has wages "due to him for a period longer than a month, and his case falls within "the exemption provided by the 21st clause of Ordinance 11 of 1865."—P. C. Nawalapitiya, 16236. *Civ. Min.*, July 5, 1870.

tion were under promise to work, wrote to *Harper* representing matters; but the letter was not duly delivered as explained in the following evidence of *Anderson*: "I sent the letter produced on the 17th August by my cangany, the defendant. He came back with the coolies, and said that Mardasamy had told him to take the coolies and not show the letter to Mr. Harper. I subsequently sent the letter by Mardasamy cangany to Mr. Harper, after the coolies had come to me." The Magistrate (*Hartshorne*) acquitted the accused on the ground that he had acted bona fide.

In appeal (*Dias* for appellant) per CAYLEY, J.—"Affirmed. The Police Magistrate has found that the defendant acted under the bona fide belief, which was not without foundation, that he was entitled to the services of the coolies. With this finding the Supreme Court has no power to interfere; and in this view of the case, it is clear that the defendant cannot be found guilty of wilfully and knowingly seducing the coolies from the service of their alleged employer in terms of the 19th clause of the Labor Ordinance."

Timber Ordinance.

P. C. Kegalla, 35917. The plaint was "that the defendants did, in the month of April 1873, clear the forest land called Korahette Hena in Wallyampatthe, (which is presumed to be crown property, the same not having been cultivated for the last 50 or 60 years) by cutting down a number of trees varying from 4 to 14 feet in circumference, in breach of the 2nd and 5th clauses of Ordinance 24 of 1848." The defendant had no sannas or grant, but it appeared from the evidence that the land had been cultivated once in 1855, and that the defendants held a tax receipt for that year. The Magistrate (*Mainwaring*) held that the proof of the land being private property was insufficient and convicted the accused, each of whom he fined Rs. 50.

In appeal, *Ferdinands* for appellant.—The fact of past cultivation and payment of tax rebutted the presumption that the property belonged to the Crown and met the requirements of clause 6 of Ordinance 12 of 1840. The land, which was a Chena, could only be cultivated at very long intervals, and the District Judge had no authority to hold that the words "within 20 years" meant within 20 years prior to the date of the Ordinance.* [But supposing that construction to be incorrect, would any Civil Court give you judgment on such evidence as there was before the Magistrate. The onus was on you to prove title —CAYLEY, J.]

Per CAYLEY, J.—"Affirmed. By the 12th clause of Ordinance 24 of 1848, the burden of proving that the land on which the timber was cut was private property was thrown upon the defendants, and it ap-

* But see judgment in appeal in C. R. Kurunegala, 83. *Civ. Min.*, Aug. 18, 1853. *Nell*, p 213.

pears to the Supreme Court that the Police Magistrate was right in finding that the defendants failed to prove this."

P. C. Matara, 71721.* A conviction in this case by the Magistrate (*Swettenham*) was set aside as inconsistent with the plaint, and a verdict of not guilty was entered in the following terms: "The defendant is charged with stealing and unlawfully receiving a looking glass and a piece of soap, the property of the Rev. D. D. Perera, and is expressly found guilty of unlawfully receiving a stolen spoon, which appears by the evidence to have belonged to Mr. de Silva Werekoon." Inconsistent finding.

August 12.

Present CAYLEY, J.

P. C. Matara, B. The charge was "that the defendants did, on the night of the 30th July, 1873, at Kohonoegamowa, unlawfully and maliciously throw two pots of human excrement, whilst the complainant and his family were engaged with some of their friends in taking their meals, contrary to the 19th clause of Ordinance 6 of 1846." The plaint having been rejected, the complainant appealed. *In appeal*, per CAYLEY, J.—"Affirmed. The plaint does not allege that the defendants did commit injury or spoil to any real or personal property, so as to bring the case within the 19th clause of the Ordinance No. 6 of 1846. If, as stated in the petition of appeal, the excrement was maliciously thrown at or upon the complainant, the defendants should be charged with assault." Plaint rejected.

P. C. Galle, 85009. The defendants were charged with assault and theft. The Magistrate (*Lee*) acquitted the accused, on the ground that he did not believe the case against them, and ordered that the property alleged to have been stolen be returned to defendants. *In appeal*, per CAYLEY, J.—"Affirmed, except as to the order for the restitution of the property. The Police Magistrate has no power to make any order as to the restitution of property." Restitution of property.

P. C. Matale, 4444. The Magistrate (*Temple*) convicted the defendant (a Kangany) on the following plaint: "that the defendant did, on the—February last, take Rs. 20 from complainant on false pretences." *In appeal*, (*Grenier* for appellent) per CAYLEY, J.—"Set aside and verdict of acquittal entered. The defendant is charged with taking Rs. 20 from complainant on false pretences. The False pretences.

* See this case reported *post*, p. 64.

plaint is bad as not stating what the alleged false pretences were.* The evidence shows that the defendant was a kangany on complainant's estate, and that he received the Rs. 20 as an advance to procure coolies, and that he failed to procure the coolies. This is not a case of obtaining money by false pretences, nor is the evidence sufficient to establish a case of fraud at common law. If the case is to be treated as one under the 22nd clause of the Ordinance 11 of 1865, it is beyond the jurisdiction of the Police Court."

Registration of death.

P. C. Matara, 72054. The defendants were convicted, by the Magistrate (*Jumeaux*) under the 18th clause of Ordinance 18 of 1867, of having "wilfully and unlawfully neglected and failed to give the complainant (a Registrar of births, deaths, etc,) information of the deaths of their children so as to be registered." *In appeal*, per CAYLEY, J.—"Set aside and case sent back for further hearing and adjudication. Defendants are found guilty of not registering the deaths of their children, in breach of the 18th clause of Ordinance 18 of 1867. No death is proved, nor is there any thing in the evidence to show any legal liability on the part of the defendants to give information of the alleged death to the District Registrar. Strict legal proof must be adduced of the requirements set out in the 18th clause of the Ordinance in question before the defendants can be found guilty."

Cruelty to animals.

P. C. Panwila, 14454. This was an appeal against a conviction by the Magistrate (*Power*) under the 1st clause of Ordinance 7 of 1862. Per CAYLEY, J.—"Set aside and verdict of acquittal entered. The defendant has been found guilty of torturing a bullock. It appears that the animal was trespassing on defendant's chena, when in order to drive it off he shot it and wounded it. This is not such a case as is contemplated by the Ordinance for the prevention of cruelty to animals."†

August 19.

Present CAYLEY, J.

Cattle trespass.

P. C. Matale, 4025. The defendant was charged, under the 3rd clause of Ordinance 2 of 1835, with having allowed 5 head of cattle

* In P. C. Matale, 41495, the proceedings were quashed in appeal, on the ground that the plaint was bad and defective in that the false pretences complained of were not stated. *Civ. Min.*, Sept. 15, 1870.

† Held that "the general words in Ordinance No. 7 of 1862, section 1, "are restrained by the particular words in the same section, and must be "taken to mean only such acts of cruelty as are ejusdem generis with the "specified acts." P. C. Negombo, 22140. *Civ. Min.*, December 29, 1870.

to trespass in the garden of the complainant, to his damage of Rs 25. The verdict of the Magistrate (*Temple*) was recorded as follows: "Guilty. To pay damages Rs. 25." *In appeal*, per CAYLEY, J.— "Set aside and a verdict of acquittal entered. Complainant has not proved that, within 48 hours from the time of seizure or trespass, he gave notice to the nearest constable, police vidahn or local headman; nor has he proved that the damages were assessed in the manner required by the 3rd clause of the Ordinance No. 2 of 1835; nor has he proved either that the garden was fenced or that the local custom did not prescribe any fence. Before a defendant can be convicted under the Ordinance in question, the requirements of that Ordinance must be strictly complied with."

False information.

P. C. Matara, 72067. The plaint was "that the defendant did, on the 18th October, 1872, at Matara, before W. J. S. Boake, Esq. J. P., wilfully give false information, with intent to support a false accusation against the complainant and others, in the case No. 22906, J. P., contrary to the 166th clause of the Ordinance No. 11 of 1868." The Magistrate (*Jumeaux*) refused to issue process, holding that the charge did not come within the clause quoted, and referred complainant to a civil action if he had sustained any damage. *In appeal*, per CAYLEY, J.—"Affirmed. The plaint is defective by reason of its not stating the nature of the false information. If the plaint had been properly framed, the Police Magistrate ought to have entertained it, and not to have referred complainant to a civil action."

Gambling.

P. C. Colombo, 5498. Forty defendants were charged, in one plaint, under the Ordinance 4 of 1841, in that they did "game, play and bet at cockfighting in a garden kept by the 2nd accused for the purpose of common and promiscuous gaming." *In appeal*, by the 26th and 29th accused, against a conviction, (*Brown* for the appellants) per CAYLEY, J.—"Set aside and verdict of acquittal entered. There is no proof that the place where the gambling was going on was a public place or one kept or used for the purpose of promiscuous gambling. The evidence taken at the trial of the other defendants, at which the appellants were not present, cannot be taken as evidence against these defendants."

Licensing Ordinance.

P. C. Colombo, 8911. This was an appeal against the conviction of the defendants for having behaved in a riotous and disorderly manner in a tavern, in breach of clause 21 of Ordinance 7 of 1873. Per CAYLEY, J.—"Set aside and verdict of acquittal entered. The appellant is charged with behaving in a riotous and disorderly manner

in a tavern, in breach of the 21st clause of Ordinance 7 of 1873. In order to convict a defendant of an offence under this clause, it is necessary to allege and prove that he was drunk. In the present case, there in no evidence that the defendant was drunk, nor is he charged in the plaint with being so."

A decree *improvide emanavit* cancelled.

Substitution of complainant.

P. C. Matara, 71720. On this case, which is reported in page 61, being called, the following judgment was delivered by Mr. Justice CAYLEY.—"In this case the Supreme Court set aside the conviction, on the ground that the charge laid in the plaint was not proved by the evidence, and that the Police Magistrate had expressly found the defendant guilty of a different charge from that laid in the plaint. Before, however, the judgment of the Supreme Court was carried into effect, by the discharge of the prisoner, it was brought to the notice of this Court that the officers of the Court below had by mistake bound up with these proceedings a plaint which belonged to a different charge, also brought against the same defendant and numbered 71721, and had bound up with the record of the latter case the plaint which ought to have been forwarded with this case. The mistake in question was partly due to the appellant himself, who attached the No. 71721 to his petition of appeal, instead of the number of the present case. Under these circumstances, I think that the proceedings of the Supreme Court at the first hearing of the appeal must be treated as null and void, there being no charge before the Court upon which any valid judgment could be pronounced. The decree moreover *improvide emanavit*, and the case, therefore, is open to reconsideration. (See Thompson's Institutes, 1, p 199.) There is, however, in my opinion a substantial fault in the proceedings of the Court below, in consequence of which I think that the conviction should be quashed. The original complainant having left Matara, another complainant was substituted in his place, on a motion dated 21st June, 1873, of which there is no record that defendant had any notice or any opportunity of opposing, until the day of trial when his Proctor took the objection and moved that the case should be struck off in consequence of the absence of the original complainant, in whose name the plaint was instituted. The Police Magistrate decided that this substitution was legal, on the authority of the case No. 1882, Jaffna, (reported in Beling and Vanderstraaten's Digest, page 178.) In that case the Chief Justice expressed great doubts as to the power of the Police Magistrate to amend a plaint by the substitution of a new prosecutor, and his Lordship pointed out how substantially important it is for a defendant to know at once who his adversary is; and that the Rules require that the summons, which in the first

instance is served on defendant, should contain the name and residence of the complainant, and that it is useless to give him this information if, when he comes before the Magistrate, another complainant is to be substituted. The Chief Justice thought that these errors were not cured by the defendant pleading to the amended plaint, and considered for these and other reasons that the conviction in the Jaffna case should be quashed. The majority of this Court, however, while admitting the irregularities referred to by the Chief Justice, thought that they were cured by the defendant's pleading to the charge without objection. For my own part, I fully concur with the observations of the Chief Justice relating to the irregularity of substituting one complainant for another; but I should have felt bound to decide the present case according to the opinion expressed by the majority of the Court in the Jaffna case, if the two cases had been in all respects parallel. But there is this important difference between them. In the present case, before any evidence was gone into, the defendant's Proctor took the objection that the original complainant was absent, and that the case, therefore, ought to be struck off. The defendant cannot then be said to have waived the objection relating to the substitution of a new complainant, as was done in the Jaffna case. And it must be remembered that it was in consequence of such waiver that the irregularities of the Jaffna case were held by a majority of this Court to have been cured. Conviction quashed."

August 22.

Present CAYLEY, J.

P. C. Matara, 72229. The defendant was convicted by the Magistrate (*Jumeaux*) and fined Rs. 25, for having used an unlicensed hackery for taking passengers for hire, contrary to the terms of the 16th clause of Ordinance 14 of 1865. The complainant deposed that the defendant had carried passengers in his hackery for hire without a license; while one of the witnesses stated that he had seen part of the hire paid, and that defendant had on former occasions carried passengers for hire without a license. *In appeal*, per CAYLEY, J.—"Set aside and verdict of acquittal entered. It is not alleged in the plaint, or proved by the evidence, that the hackery in question was a public conveyance, in terms of the 5th and 6th clauses of the Ordinance 14 of 1865." Carriers' Ordinance.

P. C. Jaffna, 2429. The defendants were charged on the 20th May, 1863, under clause 17 of Ordinance 6 of 1846, with having on the 27th of the previous month unlawfully and maliciously cut and destroyed a dam on complainant's field. On the returnable day of the Appeal rejected.

summons, the following order was recorded by the Magistrate (*Murray*)—"The parties agree to settle this case. Issue orders to the Police Vidahn and the Odear to restore the dam and to make their report." A subsequent order (without a date) appeared on record to the following effect: "Vidahn present. He states that complainant failed to accompany him. Complainant is referred to a civil action." *In appeal*, by the complainant against what he termed "the order of the 24th June," per CAYLEY, J.—"Appeal rejected. There is no order of the Police Magistrate of the 24th June dismissing the charge. The charge had been settled on the 4th June by agreement of the parties before the Police Magistrate. It must be treated as withdrawn. If the appeal is against the order of the 4th June, it is out of time."

Irregular appeal.

P .C. Jaffna, 11002. The complainant had obtained a search warrant, on an affidavit charging the defendants with fraud and theft, and had caused a certain waggon to be seized in their possession. The J. P. case was subsequently dismissed, as also a Police Court charge by the same prosecutor against the same accused; but the complainant was allowed to remove the waggon (having given proper security) and referred to a civil action. A reasonable time having elapsed and the complainant having failed to take any steps in the matter, the defendants filed an affidavit reciting all the facts and praying that the waggon in question might be ordered to be restored to them. The Justice of the Peace having refused to make such order, the defendants appealed. Per CAYLEY, J.—"Affirmed. No appeal lies from an order of the Justice of the Peace such as the one complained of."

August 26.

Present CAYLEY, J.

Jurisdiction.

P. C. Balapitimodara, 44163. The defendants were charged with having beaten and assaulted the complainant on the minor road at Kurudawatte and robbed her of a bank note of Rs. 10. The Magistrate (*Halliley*) disbelieved the case and acquitted the defendants. *In appeal*, the proceedings were quashed on the ground that the charge of Robbery was beyond the jurisdiction of the Police Magistrate.

Evidence.

P. C. Kalutara, 49266. The plaint was "that the defendant did, on the 21st day of July, 1873, assault and beat the complainant with hands, and the 2nd defendant tied the complainant by her hands, and then the 1st defendant loosened her cloth and took it away with

her, leaving the complainant naked." The charge appeared to have been proved, but the Police Magistrate (*Baumgartner*) acquitted the defendants in the following terms: "There seems to have been a general quarrel and confusion, and I cannot believe that one party is more to blame than another."

In appeal, per CAYLEY, J.—"Set aside and case sent back for further adjudication. There is ample evidence of the assault complained of, and this evidence does not appear to have been disbelieved by the Police Magistrate. He has, however, acquitted the defendants, because he considers that both parties were equally to blame. There is no evidence that the assault was committed in self defence; nor indeed, considering the nature of the outrage, is this view of the case possible. The provocation which the defendants are alleged to have received may be possibly taken into consideration in awarding the punishment; but the Police Magistrate should also take into consideration the public breach of the peace, committed by all the parties concerned in the disturbance of which the assault formed a part."

September 5.

Present CAYLEY, J.

P. C. Matale, 2587. This was a charge under the 3rd clause of Ordinance 2 of 1835. At the trial, one of the witnesses called for the prosecution having admitted that one of the bullocks that had trespassed belonged to him, the Magistrate (*Temple*) recorded the following order: "this witness to be made a defendant. Plea guilty. Sentenced to pay damage Rs. 6.

Conviction without plaint quashed.

In appeal, per CAYLEY, J.—"Set aside and proceedings declared null and void so far as regards the appellant. Two persons were charged under the Ordinance 2 of 1835, and at the trial the appellant was examined as a witness. Having admitted in his evidence that the animals which committed the trespass belonged to him, he was at once made a defendant and called upon to plead. He pleaded guilty and was sentenced to pay Rs. 6. Now, although a plea of guilty must be taken in most cases as a waiver of all irregularities of the proceedings, in the present case the Police Magistrate was not justified in calling upon the appellant to plead at all. There was no plaint against him on which any plea could be recorded, nor does it appear from the record on what charge he pleaded guilty. A plaint is neeessary in every prosecution, and here there was none against the appellant, the one filed being against two other persons. It should be observed that in any case it is very irregular to turn

a witness summarily into a defendant, because of some admissions made by him when giving evidence. In Police Court cases, the proper mode is to proceed by summons."

Conviction in absence of complainant.

P. C. Kalpitiya, 4157. This was an appeal, against a conviction for assault, on the ground that the case had been tried by the Magistrate (*Smart*) in the absence of the complainant. Per CAYLEY, J.—"Affirmed. No objection was taken in the Court below as to the absence of the complainant at the trial, notwithstanding that the defendants were represented by a Proctor. Nor is it shewn that the irregularity complained of, which was set up for the first time in the petition of appeal, has in any way prejudiced the substantial rights of the parties. The Supreme Court thinks, on the authority of the case No. 1882, P. C. Jaffna (Beling and Vanderstraaten's Reports, p. 178) that the irregularity complained of was waived by the defendants pleading to the charge without objection."

Jurisdiction.

P. C. Avishawella, 16769. The defendant was convicted by the Magistrate (*Byrde*) of having burst open the door of complainant's house and attempted to remove a box containing some clothes. *In appeal* (*Grenier* for appellant) per CAYLEY, J.—"Set aside and proceedings quashed. The case is sent back for the Police Magistrate to proceed against the defendant in the manner prescribed by the 103rd clause of Ordinance 11 of 1868. The evidence discloses a charge of Burglary which is beyond the jurisdiction of the Police Court."

Cattle trespass.

P. C. Matale, 4092. This was a charge of cattle trespass under Ordinance 2 of 1835. The complainant proved the damages as assessed by the local headman, but failed to prove that his land, which was described as a "coffee garden," was fenced or did not require to be so. *In appeal*, (*Grenier* for appellant) per CAYLEY, J. —"Set aside and verdict of acquittal entered. There is no proof that the land on which the cattle trespassed was protected by such a fence, if any, as the local custom prescribed."

Timber Ordinance.

P. C. Matara, 71746. The charge, as made on the 17th April, 1873, was that the defendant had, in the month of November, 1872, cut timber on crown land without a permit, in breach of the 2nd

clause of Ordinance 24 of 1848. The Magistrate (*Jumeaux*) dismissed the case, holding that the prosecution was too late, more than three months having elapsed since the date of the alleged offence. *In appeal*, per CAYLEY, J.—"Set aside and proceedings declared null and void. Under the Ordinance No. 4 of 1864, any person cutting timber on Crown land without a license is liable on conviction to such punishment by fine or imprisonment as it shall be competent for the Court, before which such conviction shall be obtained, to award; and under the 119th clause of Ordinance 11 of 1868, the election of the Queen's Advocate is required in order to give the Police Court jurisdiction to try offences so punishable. In the present case there is no evidence of such election. Under clause 3 of Ordinance 4 of 1864, the offence is not prescribed until two years have elapsed from the time of its commission."

Evidence.

P. C. Balapitimodera, 44260. A conviction by the Magistrate (*Halliley*) on a charge of assault was affirmed in the following terms: "The Supreme Court has no power to interfere with the finding of the Police Magistrate upon the truth of the evidence, although a perusal of the evidence would lead the Court to a different conclusion from that arrived at by the Police Magistrate."

Security to keep the peace.

J. P. Negombo, 8698. This was an appeal against the refusal of the Justice of the Peace (*Ellis*) to bind over the defendants under the provisions of clause 221 of Ordinance 11 of 1868. The facts of the case are set forth in the Supreme Court judgment. (*Ferdinands* for appellant, *Grenier* for respondent.) Per CAYLEY, J.—"Set aside and case sent back for the Justice of the Peace to require the defendants to enter into recognizances to keep the peace, in the manner prescribed by the 223rd clause of Ordinance 11 of 1868,—1st defendant to enter into a recognizance for six months in the sum of Rs. 500, with two sureties in the sum of Rs. 250 each, and the 2nd and 3rd defendants to enter into recognizances for the same period in the sum of Rs. 300, with two sureties in the sum of Rs. 150 each. It appears from the evidence, which is uncontradicted and which does not appear to be disbelieved by the Justice of the Peace, that the defendants with a crowd of about a hundred persons, many of whom had bill-hooks and mamoties in their hands, and some masquerading in female attire, went with tom-toms beating to complainant's estate and cut a path through one of his fences and, having passed through a portion of the estate, cut another gap in the fence higher up. When remonstrated with, the first defendant said 'if any one tries to prevent us we will

strike him.' Had it not been for the prudent directions given by complainant to his servants not to interfere by force, it is extremely probable that a serious breach of the peace would have ensued. The Justice of the Peace has discharged the defendants, on the ground that they acted from a desire to assert a right of way; that they did not use any unnecessary violence; that they refrained from molesting any of complainant's servants; that they did not come armed or in any way prepared for committing a breach of the peace; that, although they came in numbers, it was probably in order to secure themselves from assaults; and that they were prepared to resist but, as the event proved, in no way inclined to provoke a breach of the peace. The Justice of the Peace adds, that they merely asserted a legal right in a legal manner. Now there is no evidence whatever of the right of way claimed; and it appears to the Supreme Court that, whatever right the defendants may have had, they asserted it in a most illegal manner. They went in numbers sufficient to overcome or overpower any resistance that would be likely to be offered; and by their threats, both before and during the occurrence, it is clear that they were prepared to resist by force any interference in their illegal proceedings. There is also ample evidence, that many of the party carried with them bill-hooks and mamoties. The circumstances of the case indeed disclose all the elements of a Riot, which is defined to be a tumultuous disturbance of the peace by three persons or more, by assembling together of their own authority with an intent mutually to assist one another against any one who shall oppose them in the execution of any enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. It is difficult to conceive any act more likely to occasion a breach of the peace than that committed by these defendants; and in view of their conduct, both before, during and after the occurrence, the complainant is quite justified in anticipating a repetition of the outrage."

September 9.

Present CAYLEY, J.

Contempt. Bawa's case.

P. C. Galle, 85757. Mr. Ahamado Bawa, Proctor, was after due notice called upon to answer to the following charges of Contempt of Court: "(1) for having, on the 26th day of July, 1873, unlawfully, knowingly and wilfully filed a fictitious and false plaint, charging certain persons, to wit, Charles Ondatjie and others, with theft, and obtained an order for summons on such fictitious and false plaint, in contempt of Court and in breach of Ordinance No. 11 of 1868, clause 107; (2) for having, on the day aforesaid, taken the said plaint into his posses-

Contempt.
Bawa's case.

sion and kept it, so as to prevent the issue of summons and thereby impede the due administration of justice and obstruct and prevent the due execution of the orders of this Court, in contempt of this Court and in breach of Ordinance No. 11 of 1868, clause 107."

The facts of the case are fully recited in the following affidavit which was submitted by appellant's Counsel at the hearing of the appeal:—

I Ahamado Bawa, Proctor of the Supreme Court of Ceylon, residing at Galle, now at Colombo, make oath and say, that on Saturday, the twenty-fifth day of July last, whilst the Police Magistrate of Galle was still on the Bench, the Police Court Bar was occupied by myself, Messrs. Advocate Ondatjie, Proctors J. W. Ludovici, W. M. Austin, James Karoonaratna, W. H. Dias, G. L. Jayesekera, and others. A client of mine paid me a fee, part of which consisted of a new Five Rupee Note of the Chartered Mercantile Bank, Kandy. Mr. Charles Ondatjie, who was seated near me, took it up and handed it to Mr. W. H. Dias, who sat next to me. He passed it to Mr. Karoonaratna, who in his turn handed it to Mr. Jayesekere, who put it into his pocket, all in jest. In the same spirit, I took up a sheet of paper, and wrote a plaint charging the above-named gentlemen with theft, and after shewing the paper to some of them handed the same to Mr. R. L. Van Buren, another Proctor, saying in the most jocular manner "I appoint you my Proctor." This gentleman, without my consent or knowledge, handed the document to the Court Peon, who later submitted it to the Magistrate along with other plaints of the day. The learned Magistrate, without enquiring from any of the parties named in the plaint, either from complainant or accused, all of whom were at the time in the Court, ordered summons to issue. When the plaint was brought out from the Magistrate's chambers by the Peon, Mr. R. L. Van Buren himself took it, and in the midst of the confusion and consternation thus created by his mistake, I took it from him and, declaring my astonishment and regret, intended to explain the matter to the Magistrate at once. At first I thought of submitting a written motion, but not wishing to treat the matter so seriously wished to speak to the Magistrate personally in his chambers as the most proper and appropriate course. Before my doing so, however, the Magistrate left the Court for the day. I did not at the time attach much importance to the mistake, in the hope that the Magistrate himself would be satisfied that it all originated in a joke and the rest was a mistake, and I contented myself with hoping to explain the matter on Monday in chambers. For this reason, and not being in familiar terms with the Magistrate, I did not wish to detain him in the street, where I had met him in the same afternoon, as I should otherwise have done, if I had known then that the Magistrate would not attend Court on Monday. Unfortunately on Monday, the Court was taken up for repairs by the Public Works Department, and the Magistrate did not attend again till the following Saturday (the 2nd August) and I allowed the document to remain in the Court itself, with my other papers contained in an unlocked box left in the Court in charge of one of its officers, and had no access to it till Saturday next. On this day I attended the Court earlier than the Magistrate, and taking out the paper from the box was waiting to see the Magistrate when that gentleman arrived, and without questioning me at all—though he knew I was in the Court—commenced to take depositions against me in his chambers, and issued a Search Warrant to his clerk to search my box. Having done so, he came out and in an authoritative manner ordered me to bring my box and papers into his room. I did so, and was

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about to address him on the subject of the plaint which I held in my hand, when the Magistrate did not want to hear me and warned me against the consequences of any statement, and for the first time informed me that he charged me with "stealing and abstracting a Record." Though I was certainly astounded at the gravity of the charge, involving as it does no less a penalty than seven years' transportation or imprisonment at hard labour and corporal punishment not exceeding a hundred lashes, yet calmly and temperately, with the expression of a sincere regret for the accident, I explained all about it and offered to prove my statements by the gentlemen concerned. Mr. R. L. VanBuren was then called and materially corroborated my statements as to how he got and returned the plaint to me. The Magistrate then ordered me to find bail for a thousand Rupees, and would not accept my personal Recognizance till I made affidavit of being possessed of property to that amount. Requesting me not to leave the Court, the Magistrate took the proceedings to the Deputy Queen's Advocate, and after consultation returned in a couple of hours, and for the first time in the course of the proceedings asked me if I intended to cross-examine the witnesses examined by him behind my back. I merely questioned his Interpreter Modliar, to shew by my conduct how astonished and grieved I was at the unfortunate mistake and to see that the plaint had been endorsed by the Magistrate and summons ordered by him. At this stage the Magistrate told me that I was then charged with not stealing and abstracting the Record as before, but with concealing it, but under the same enactment and subject to the same penalty, and took my formal statement. On the following Monday or Tuesday I was asked to give in a list of my witnesses, and I did so. Of the names contained in my list I had only called two, Mr. Ondatjie and Mr. Karoonaratna, (the 1st and 3rd accused) when the Justice of the Peace declared that he did not think further evidence on my part necessary, and dispensing with it forwarded the proceedings to the Deputy Queen's Advocate. My two witnesses proved, as the rest would have, that the plaint was a joke, and that I had not concealed it at all. On the 16th August, the Magistrate called upon me to answer certain charges of contempt preferred by him (1) for wilfully and knowingly filing a false and fictitious plaint, and (2) with taking possession of it, and ordered my attendance before him on the 18th August, when I explained the matter as appears on the face of the Record in this case No. 85757, Police Court, Galle.

Sworn to, at Colombo, this 23rd day of August, 1873.

Before me

(Signed) S. GRENIER, J. P. (Signed) AHAMADO BAWA.

The Magistrate (*Lee*) after hearing the accused's explanation, which was in effect the same as disclosed above, held as follows:—"The Court is willing to accept Mr. Bawa's explanation of the circumstances under which the document was first presented to the Court, and is not disinclined to consider that this unhappy affair commenced in a joke, most improper and indecent, but still a joke. The Court is willing to suppose that Mr. L. Van Buren made a mistake, a reprehensible mistake, when he presented the record for the order of the Magistrate. The case, however, assumes a very different complexion when the retention of the record is considered. Whether the record was or was not intentionally presented to the Magistrate, after it had

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received the Magistrate's orders and been signed by him, it became a record of the Court, the property of the Court and a solemn proceeding. Mr. Bawa states that he expressed himself sorry, and was so astounded that he could not at the first decide what steps to take; but it is clear, from his own admission, that he knew that he should speak to the Magistrate, and that from a want of courage, if for no other reason, he did not do so, either at the time or when he met the Magistrate in the street; and he did not come to see him or write to him. He retained the document in his custody till enquiry was made. Had no enquiry been made, the detention of this Court record might have continued till now. It is clear from Mr. Bawa's own admissions that he kept this case book to prevent the issue of Summons, to prevent, that is, the due and legitimate execution of the orders of the Magistrate, who would have rendered him liable to punishment for bringing a false and frivolous case. An offence so grave must of necessity be visited with punishment proportionate to such gravity; and however willingly I would spare myself, however willingly I would spare his brethren, however willingly I would spare the offender himself from the effect of conduct so reprehensible and disgraceful, I have a duty cast upon me, the duty of upholding the majesty of the law and the dignity of the bench. From this duty I would willingly shrink if it were possible. Ahamado Bawa is found guilty of contempt of Court and sentenced to be imprisoned for seven days. Departmentally, Ahamado Bawa will be precluded and prohibited from access to the records for three months."

In appeal, Kelly, for appellant. The Police Court could only punish for contempts committed *in facie curiæ*, for the words "to the Court" in Ordinance 11 of 1868 had been held not to confer a larger jurisdiction than the words "before the Court" in the old Ordinance 8 of 1846. (Grenier's Reports, 1873, p. 19.) The Magistrate having accepted Bawa's explanation as to the filing of the fictitious plaint, *the detention of the document*, so far from having been disrespectful to the judge, had been in vindication of justice, by the prevention of innocent parties being illegally summoned; while no judicial rule or departmental order in respect to such documents was proved to have been thereby contravened. The learned Counsel then went into the facts as disclosed in the affidavit and the record, to show that no contempt had really been intended.

Clarence, D. Q. A., for respondent. The fact appeared to be that Bawa himself removed the document from the file of the Court and kept it. Whether or no it was his intention that the plaint should be presented to the Magistrate, having in point of fact been placed on the file of the Court it was thenceforth a record of Court, and no practitioner had any right *mero motu suo* to abstract it. Bawa should

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have applied to the Magistrate: he had ample opportunity of doing so. A very dangerous precedent would be established, were this Court to hold that a practitioner was at liberty, without the sanction of the judge, to remove or detain a document filed of record. The new Ordinance employing the phrase "contempt to the Court" appeared expressly to contemplate a wider jurisdiction than that under the old enactment, which restricted the jurisdiction, by the phrase "*before* the Court," to contempts committed *in facie curiæ*. In the decision cited by his learned friend, the expression employed was within "the precincts of the Court." The Record Room was within "the precincts of the Court" and a most important portion of what lay within those precincts.

Per CAYLEY, J.—"The proceedings in this case having been read, it is considered and adjudged that the order of the Police Court of Galle of the 18th August, 1873, sentencing the appellant to imprisonment, be set aside. In this case the appellant, who is a Proctor of the Supreme Court practising at Galle, has been found guilty of contempt of Court by the Police Magistrate of that station and has been sentenced to imprisonment for seven days. Two charges of contempt were preferred against him, one for having wilfully filed a fictitious and false plaint against certain persons, the other for having taken the said plaint into his possession and having kept it so as to prevent the issue of summons and thereby impede the administration of justice and obstruct and prevent the due execution of the orders of the Court. No evidence was taken at the hearing of the charge, except the defendant's own statement, which seems to have been accepted by the Police Magistrate as substantially true. Justice of the Peace proceedings had, however, been previously taken against Mr. Bawa; and as they were referred to in the argument before this Court as well as in an affidavit filed by the appellant, I sent for them and have read them in connection with this case. It will not be necessary to enter fully into the first charge of contempt, viz., that of filing a false and fictitious plaint, for the Police Magistrate has in effect acquitted the appellant on that charge, expressing himself willing to consider that the plaint in question was drawn up as a joke, and that it was by a mistake that it was presented for the order of the Court. The substantial charge, on which the appellant has been sentenced, is the charge of having detained the plaint, after it had received the order of the Magistrate, with the object of preventing the issue of a summons. The facts of the case, as gathered from the proceedings before me and the affidavit of the appellant, are substantially these. On Saturday, the 26th July, the appellant was in the Police Court with several other practitioners. A five rupee note which had been paid to the appellant was in jest taken from the table

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and handed about from one Proctor to another, until it came to the hands of Mr. Jayesekere, who in jest put it into his pocket. The appellant then in jest drew up a plaint charging Mr. Jayesekere, two other Proctors and an Advocate with theft of the note. The plaint was then handed to Mr. R. L. Van Buren, who gave it to the Court peon, and it was in the usual course presented to the Magistrate. The appellant in his affidavit states that he said to Mr. Van Buren in the most jocular manner 'I appoint you my proctor.' It appears, however, from Mr. Van Buren's evidence in the J. P. proceedings, that he treated the matter seriously. However this may be, the Police Magistrate is apparently satisfied that it was never intended by the appellant that the plaint should be presented for the order of the Court. Upon the plaint being presented, the Police Magistrate, without making any enquiry from the parties concerned, ordered a summons to issue. The plaint then appears to have been placed with several papers on the Singhalese Interpreter's table, from which it was taken up by Mr. Van Buren, from whom it was taken by the appellant, who put it into his box which he keeps at the Court. There appears to have been no secresy about this. The Interpreter, as appears from his evidence in the J. P. proceedings, was aware that the appellant had taken the paper, and he requested the appellant to give it to the Clerk. The appellant, as the Interpreter states, appeared very sorry and told him (as he thinks) that it was a joke and that he would speak to the Magistrate about it. Unfortunately the appellant did not take immediate steps to inform the Police Magistrate. The Magistrate thinks that he failed to mention the matter from want of courage. It appears from the appellant's affidavit and statement, that he was so bewildered at the probable result of his foolish joke, that he had not made up his mind what course to pursue, until the Magistrate had left the Court, which occurred early, the day being Saturday. The plaint accordingly remained in the appellant's box, which was kept in Court, and, as the appellant states, in charge of a Court peon. Unfortunately the Court was closed for repair until the following Saturday, (2nd August) and as the appellant states he had no access to his box during the interval. On the morning of the 2nd August, the Police Magistrate came to his Chambers and there proceeded to take J. P. proceedings against the appellant, on a charge of abstracting a public record in breach of Ordinance 6 of 1846. From the appellant's affidavit, it would appear that he came to Court early on the 2nd with the intention of bringing the matter to the notice of the Police Magistrate, but that, before he had an opportunity of doing so, the Police Magistrate had already commenced to take depositions against him in Chambers. These J. P. proceedings were resumed on 8th August, after which the criminal

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charge appears to have been abandoned, though there is no record that it has been dismissed. On the 18th August the proceedings for contempt were instituted. Now, there is an irregularity here which should be noticed. It does not appear that the criminal charge had been dismissed before the appellant was called upon to explain his contempt. The criminal charge and the charge of contempt were in effect founded upon precisely the same act; and until the criminal charge had been formally dismissed and that dismissal formally recorded, the appellant should not have been called upon to make any statement whatever relating to the case, except in the due course of the J. P. proceedings. The question, however, which this Court has to determine is this, did the act of the appellant in putting the plaint into his box, in order to prevent the issue of a summons, and keeping it there for a week while the Court was closed, without bringing the matter to the notice of the Police Magistrate, amount to a contempt of Court under the provisions of the 107th clause of Ordinance 11 of 1868. The Supreme Court thinks that, although in many cases the unauthorised detention of a record would amount to a contempt, under the peculiar circumstances of the present case, it did not. In the first place, it is clear that no contempt was intended. A foolish joke had been perpetrated by the appellant and in consequence of the mistake of Mr. Van Buren, (which the Police Magistrate rightly characterises as a reprehensible mistake) the joke was likely to be followed by serious consequences which were never intended; and though he acted improperly as well as foolishly in not at once mentioning the matter to the Police Magistrate, he can hardly be considered as guilty of contempt of Court in endeavouring to prevent what might otherwise have led to a more serious contempt, namely the putting in motion of the process of the Court and carrying on a prosecution upon an entirely fictitious plaint, which had been prepared as a jest and presented to the Court by a mistake. Having failed to bring the matter before the Police Magistrate at once, he ought, no doubt, to have taken the first opportunity of writing to that officer, although the Court was not sitting; and, by neglecting to do this, he has, in my opinion, laid himself open to much blame. This Court does not think, however, that his failure to write or call upon the Magistrate at his house, notwithstanding that such was the appellant's duty, can be construed into a contempt of Court. The Police Magistrate states that appellant retained the document in his custody till enquiry was made, and that no enquiry being made the detention of the Court record might have been continued to the present time. This, however, appears to the Supreme Court to be by no means certain; for the appellant had no opportunity of bringing the matter to the notice of the Police Magistrate at the Court, after the first day, until the

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J. P. proceedings were commenced, for during the interval the Magistrate did not sit, and these J. P. proceedings were commenced by him in Chambers before he took his seat on the Bench, on the first day that the Court was reopened for business. The appellant himself in his affidavit swears that he attended the Court earlier that day than the Magistrate, and that, having taken the papers in question from his box, he was waiting to see the Magistrate, when the latter commenced taking depositions against him in Chambers. The fact that the Interpreter was aware that Mr. Bawa had taken the plaint, and the fact that he had been informed by Mr. Bawa that the affair was a joke, and that Mr. Bawa had declared to him his intention of speaking to the Police Magistrate, lead this Court to give credit to the appellant's affidavit, that it was his intention to bring the matter to the notice of the Magistrate, as soon as the Court resumed its sitting. Under all the circumstances of the case, this Court does not think that a contempt of Court, such as is punishable under the 107th clause of Ordinance 11 of 1868, has been committed. Under that clause, a Police Magistrate has no power to punish for contempt, unless the person charged shall fail by his answers, when called upon for his explanation, to satisfy the Court that no contempt was intended; and in this case this Court thinks that none was intended. The original joke, which gave rise to the unfortunate proceedings, was a foolish one and one unbecoming the professional character of the parties concerned; and the mistake of Mr. Van Buren, in causing the fictitious plaint to be presented to the Magistrate, was certainly reprehensible. Indeed, it is difficult to understand how he could have thought the appellant to have been in earnest. This Court thinks, however, that the Police Magistrate would have displayed a wise discretion, if before issuing summons on the plaint he had, in pursuance of the course authorized by the 3rd clause of the Ordinance 18 of 1871 briefly examined the complainant. The plaint purported to be a charge of theft preferred by a Proctor of this Court against an Advocate and three other Proctors, all of whom were in Court at the time. In the case of a charge of this extraordinary kind, it would certainly have been expedient, before it was acted upon, that some brief enquiry should be made. Had this been done, none of these proceedings would have ensued. It should be observed that when a contempt of Court has been committed through ignorance, inadvertance or mistaken motives, and has been promptly acknowledged, the dignity and authority of the Court is generally sufficiently vindicated by an admonition. It is only in extreme cases of manifest disrespect or disobedience that it should be visited with so severe a punishment as that to which the appel-

lant has been sentenced ; for to send a Proctor of 15 years' standing in the profession to jail, even for seven days, is a very severe punishment. The Supreme Court wishes to observe that this judgment is not to be taken as any authority that the unauthorized removal or detention of a record may not be a contempt of Court. This Court thinks that in many instances it might be a very grave contempt indeed. The present case is decided upon its own peculiar circumstances, and the facts disclosed do not appear to the Supreme Court to establish such an intentional contempt of Court as is punishable under the Ordinance in question."

September 12.

Present CAYLEY, J.

Labor Ordinance.

P. C. Matale, 3862. Seventeen coolies were charged on the following plaint : "that the defendants did, on the night of the 15th instant, leave the complainant's (*Keane's*) service without notice, in breach of the 11th clause of Ordinance 11 of 1865." The accused appeared to have left complainant's estate on the 15th May, after having given the following written notice to him on the 12th : "we give you notice that we will leave your service on the 15th instant, as you have not paid us for the last three months." The receipt of this notice was admitted, as also the fact that arrears of wages were due ; but it was explained by the manager (*Wilkinson*) that when he sent *Keane* in May to pay February's wages, the defendants refused to receive the money on the ground that their Kangany had been discharged. On the day of trial, twelve of the defendants were present; and on their behalf Mr. Proctor Tillekeratne submitted a motion "that the 2nd and 4th defendants be admitted as witnesses for the defence, their evidence being material." The motion, however, having been disallowed, the Magistrate (*Temple*) after hearing evidence found the defendants guilty and sentenced them to one month's hard labor each. *In appeal*, per CAYLEY, J.—"Affirmed. The defendants made no demand for their wages, as required by the 21st clause of the Ordinance 11 of 1865, so that the non-payment of such wages did not excuse them from the necessity of giving one month's notice to quit service. It is inexpedient, as a general rule, to put more than 10 persons on their trial at the same time in cases of this kind. But it does not appear that the evidence of the 2nd and 4th defendants would have in any way exculpated the others. What they had to prove was not mentioned in the Court below, nor is there any affidavit filed with the petition of appeal."

September 19.

Present STEWART, J.

False information.

P. C. Matara, 71598. This was a charge of false information under the 166th clause of Ordinance 11 of 1868. Without entering into evidence, the Magistrate (*Jumeaux*) made the following order: "This case is beyond the jurisdiction of the Police Court. Complainant and her witnesses were duly sworn or affirmed, and gave their evidence before the Justice of the Peace in favor of the accused. If any charge lies, it is certainly one of perjury." *In appeal*, per STEWART, J.—"Set aside and case remanded for hearing. If the defendants did no more than give evidence as witnesses, they would not be liable under 166th clause of Ordinance 11 of 1868. But if they or any of them gave false information, whether by affidavit or otherwise, with intent to support a false accusation, such defendants would come within this charge. See Grenier's Reports, part I. P. C. Balapitiya, 43072, July 3rd, 1873. Kurunegala, P. C. 6828, per Supreme Court, November 28, 1869."

Refusal of process.

P. C. Colombo, B. The Magistrate (*Fisher*) refused to order summons on a charge of theft in the following terms: "Referred to a civil action. The accused was complainant's kept mistress and the articles referred to are wearing apparel." *In appeal*, per STEWART, J. —"Set aside and case remanded for further hearing. The Magistrate should record the examination of the complainant. The answers given by the complainant have not been taken down, the Magistrate only noting the conclusion arrived at by him."

Timber Ordinance.

P. C. Galle, 85583. This was a charge of removing timber without a permit, in breach of the 2nd and 5th clauses of Ordinance 4 of 1864. The Magistrate (*Lee*) held as follows: "The evidence shews a removal after the time specified in the permit, but it is proved that there was a permit. The plaint is defective and the accused is acquitted. It is competent to complainant to prosecute on an amended plaint." *In appeal*, per STEWART, J.—"Set aside and case remanded for further hearing. Instead of filing a fresh plaint, it appears to the Supreme Court that the complainant should have been allowed to amend his plaint, by adding a count charging the defendant with the removal of the timber after the time specified in his permit, in breach of the clauses of the Ordinance referred to. The case is remanded accordingly."

Dismissal.

P. C. Colombo, 7843. The Magistrate (*Fisher*) dismissed the charge (which was one of assault) in the following terms: "The accused in this case is not forthcoming. The case has been repeatedly postponed and cannot be allowed to pend any longer. The case is therefore dismissed." *In appeal*, per STEWART, J.—"Set aside. According to the Fiscal's report, made on the day the case was dismissed, the defendant ran away on seeing the process-server. Under these circumstances, to confirm the order dismissing the case would in effect be to allow the defendant to benefit by his having hitherto successfully evaded arrest. Warrant should re-issue and every effort be made to arrest the accused."

Maintenance.

P. C. Kalutara, 49264. This was a case of maintenance against the father of several illegitimate children. The complainant (the mother) led ample evidence to prove the charge, but the Magistrate (*Baumgartner*) acquitted the defendant in the following judgment. "Complainant has failed to show by whom the children now require to be supported. Beyond her own statement, that defendant does nothing to support them, the evidence on this point is all presumption. I take it that this is a fact which must be proved specially, and that it cannot be taken on presumption. It is unnecessary to express an opinion as to the paternity. *In appeal*, (*Grenier* for appellant) per STEWART, J.—"Set aside and case remanded for further hearing. It is not suggested that the defendant supports the children or that they have means of their own for their maintenance. It would therefore almost seem to follow that they require to be supported by others. Even if it be the fact that the children are maintained by the complainant, this will make no difference, she being included in the word 'others.' At the further hearing it will be open to the complainant to give further evidence as to how the children are supported."

Labor Ordinance.

P. C. Gumpola, 24771. The charge was "that the defendant, being a servant employed under complainant, was, on the 12th July, 1873, at Maskelya in Dickoya, insolent towards the complainant, and that the defendant also misconducted himself, in breach of the 11th clause of Ordinance 11 of 1865." The complainant (*Gray*) deposed as follows:

"I own and manage Bunyan Estate. The accused was my Kangany. On July 12th, I found fault with him about a contract badly executed. I told him the contract was discontinued, and he gesticulated and

made much noise in the store where I lived. He said the Doray was a (Tamil) vagabond. Mrs. Gray was in the store and approaching her confinement."

Cross-examined. The Tamil word used means in the Dictionary "a wrangler, a mischievous fellow, etc" The contract was monthly. The accused was to be paid R. 1 per acre, to be paid monthly.

Re-examined He was a monthly servant, besides being a contractor. The abusive epithet was used both to my face in the store and when I was upstairs"

The Magistrate (*Penney*) found the accused guilty and sentenced him to forfeiture of wages and one month's hard labor. *In appeal, Grenier* for appellant.—The defendant's misconduct, if any, was in his capacity as contractor, and he could only be civilly liable. [He was a Kangany, and as such was a servant under the Ordinance.—STEWART, J.] But his conduct was independently of his duties as Kangany, and it was with reference to the contract that there was a dispute. The complainant's own words were—"he was a monthly servant besides being a contractor." Supposing an Appoo contracted to build a house for his master, could the former be criminally indicted for negligence or disobedience of orders in connection with the work? [But here the man was paid by the month and was therefore a monthly servant.—STEWART, J.] It made no difference whether he was paid by the week or by the month. The weeding contract was in its very nature such as would extend over a month, and should have been in writing, as required by the 7th clause of the Ordinance, to render the defendant liable to the penalties prescribed by the 11th clause. Besides, the conduct of the defendant did not amount to an offence. The Ordinance should be strictly construed, and where a contractor-servant called his employer a "*perelecaren*," (that was the word used) meaning "a quarrelsome person," he could hardly, in fairness and justice, be convicted of "insolence." *Ferdinands*, for respondent. It was impossible to dissever the character of contractor from that of servant in this case. The circumstances under which the language complained of was used, apart from the language itself, rendered the defendant liable to punishment for insolence. Per STEWART, J.—"Affirmed."

September 23.

Present STEWART, J.

P. C. Panadure, 21657. The plaint was "that the defendants did, on the 31st ultimo, at their shop at Morotto, sell intoxicating liquors, contrary to their license, in breach of the 10th clause of

Licensing Ordinance.

Ordinance 7 of 1873." The evidence went to show that the accused, although only authorised to sell liquor by the bottle, had sold by the glass. The license itself was not produced, and the Proctor for the defence took the objection that there was no evidence to show what the defendants were licensed to do and that the plaint charged them with *selling* and not *retailing* liquor. The Magistrate (*Morgan*) however convicted one of the defendants and sentenced him to pay a fine of Rs. 20. *In appeal*, the judgment was affirmed.

Maintenance.

P. C. Galle, 85710. The defendant was charged with not having maintained the complainant, his wife. The Magistrate (*Lee*) having acquitted the accused, on the ground that the complainant had been legally divorced before the institution of the case, the judgment was affirmed.

Licensing Ordinance.

P. C. Galle, 85902. The charge was that "the defendant, being the keeper of a tavern, did, on the 18th instant, in the Fort tavern No. 1, allow people to sit and loiter therein, in breach of Ordinance No. 7 of 1873, clause 18th." The Magistrate (*Lee*) convicted him in the following terms: "I do not consider that it was intended by the Legislature to make the mere sitting in a tavern an offence. I apprehend that the word 'sit' is in some degree governed by the subsequent word 'loiter,' and that to constitute an offence there must be either a "sitting and loitering' or a *loitering* alone. It is quite clear that the defendant, being a tavern keeper, has on this occasion allowed persons to loiter, and to sit and loiter, in the tavern." *In appeal* (*Kelly* for appellant) per STEWART, J.—"Affirmed."

Cruelty to animals.

P. C. Panadure, 21311. The defendant was charged with having shot the complainant's dog, in breach of the 19th clause of Ordinance 6 of 1846. It appeared that the dog had been tied to a jack tree near complainant's kitchen, and that defendant, on the pretence that the animal had killed one of his pigs, deliberately shot at it and killed it. The witnesses for the prosecution admitted that the dog had been of a ferocious nature. *In appeal*, against a conviction, per STEWART, J.—"Affirmed. According to the evidence, the pig had been killed fifteen days before the shooting of the dog. The shooting appears to have been both wilful and malicious."

Theft by the Police.

P. C. Colombo, 9101. The charge was "that the defendants did, on the 22nd July, at Slave Island, unlawfully enter the opium shop of the complainant, who was a licensed dealer, and did steal, take and

carry away a handful of money from the drawer of complainant's table. The facts of the case are set forth in the judgment of the Magistrate (*Fisher.*)—"I believe the case against the accused. It does not appear that the accused went into the complainant's shop with any deliberate intention to rob him. They asked for money to be lent to them, and the complainant's servant refused to gratify them, upon which the money was taken, apparently only a few coppers amounting to about six pence. The offence would not be a very henious one, if the actors had not been Constables in uniform, but they being Constables must be punished with comparative severity. From Inspector Buckley's account, it would appear that a complaint was made to him of the money in question having been taken; but in face of one of the complainant's party being locked up at the time, he deemed it a frivolous one, and sent the complainant about his business. The worst point of the proceedings to my mind was the arrest and confinement of Veeracuttie, whom, whatever Serjeant Rodrigo may say to the contrary, I believe to have gone to the station to ask for assistance. It is evident from Inspector Buckley's action as regards him, that he was locked up on some frivolous complaint. The 1st accused is an acting Sergeant. The other two Constables were at the time under his command. He must therefore be punished most severely, and he is sentenced to be imprisoned with hard labor for two months. The 2nd accused is sentenced to pay a fine of Rs. 30 or to be imprisoned for one month with hard labor. The 3rd accused appears only to have taken a passive part in the proceedings, and I shall leave him to be dealt with by his own officers. *In appeal*, (*Ferdinands* for appellant) per STEWART, J.—"Affirmed."

P. C. Balapitimodara, 44307. The plaint, as filed by a Police Officer on the 25th August, was as follows: "That the defendant did on this day at the Court House of Balapiti escape from custody." The Magistrate (*Halliley*) having heard complainant's evidence fined defendant Rs. 5. *In appeal*, per STEWART, J.—"Set aside. The plaint is defective. It does not allege, nor does it clearly appear from the evidence, that the defendant had been legally arrested and was in lawful custody." Defective plaint.

September 26.

Present STEWART, J.

P. C. Haldamulla, 2206. The charge was "that the defendant did, on or about the 28th day of May last, at Lemastota, wilfully and knowingly seduce and take away two coolies, named Ratnapulle Labor Ordinance.

and Kanagamutti, who were engaged to come and carry on work on Macaldenia Estate under the complainant, while they were *en route* to that estate, in breach of the 19th clause of Ordinance 11 of 1865." The complainant (*Murray*) deposed that he had on the coast, as his agent for supplying coolies, one Muttyan Kangany, who had once been employed on Meeriabedde Estate but who held a discharge in full from the Superintendent thereof (*Liston*;) that the coolies in question had bound themselves in writing in India to work on Macaldenia; but that they had been seduced away to Meeriabadde by the accused, who was Liston's head Kangany. He charged on information received from two other coolies, who proved that the accused had induced the men to desert by telling them that there was severe sickness at Macaldenia. It was also proved that neither Ratnapulle nor Kanagamutti, who had previously worked for *Liston*, were bound to his estate by advances or otherwise. The writings obligatory alleged to have been executed by them in India, in favor of complainant's agent, were.

1. (B.) A "debt bond" by Kanagamutti, which was as follows:— "The sum I received this day from you is Rs. 10, for which sum of rupees ten I will get coolies to be taken to Macaldenia in Haldamulla, Ceylon, where I and my coolies will work under you, not less than a year, and on your demand I shall repay the sum of rupees ten and redeem this bond; and if I and the coolies fail to go, I will pay one half for one, or half more added to the principal. To that effect, I have agreed and granted this debt bond."

2 A "debt bond" by Ratnapulle as follows: "On account of necessity I do borrow and receive this day the sum of Rs. 84, for which sum of rupees eighty four I will pay interest of one per cent. and will redeem the bond on or before the 30th January, 1874, after paying in full the principal and interest."

It was shown at the trial that a copy of the first document had been duly given to Kanagamutti, immediately after the execution thereof. The Magistrate (*Reid*) convicted the defendant and sentenced him to three months' hard labor.

In appeal, *Browne*, for appellant, contended that one of the coolies, Ratnapulle, was clearly not bound, as he had not entered into a written contract to serve or received a copy of any such contract, as required by the Ordinance, section 9; and that as to the other cooly, who had been subpœned by complainant but not examined, the evidence as to delivery to him of the copy-contract was insufficient. (*Ferdinands*) for respondent was not called upon. Per STEWART, J. —"Affirmed. If the defendant considered the evidence of Ratnapulle and Kanagamutti would have been in his favor, there was nothing to

prevent his calling them as his witnesses. In respect of the cooly Kanagamutti, the document B places it beyond all doubt that he was under engagement to proceed to Macaldenia, complainant's estate."

September 26.

Present STEWART, J.

Master and Servant.

P. C. Panwila, 14568. This was a charge against a servant for leaving his master's service without notice and without reasonable cause. The evidence disclosed that the accused had been struck and told "to go" by the complainant who, however, pleaded his servant's insolence in justification of the assault. The Magistrate (*Power*) convicted the defendant, holding that what the master intended by his language was that the servant should leave his immediate presence but not his service. *In appeal*, (*Grenier* for respondent) per STEWART, J.—"Set aside. The defendant, it would appear, was not only assaulted by his master, but also told to go. Under these circumstances, the charge against defendant, for leaving his service without notice, cannot be maintained. In what the impertinence consisted which, it is alleged, provoked the assault is not stated, so as to allow any opinion being formed as to whether it was, under the circumstances, such as would justify the defendant leaving complainant's service."

September 30.

Present STEWART, J.

Cruelty to animals.

P. C. Galle, 85328. The plaint was "that the defendant did, on the 3rd July, at Mipe, beat, ill-treat, cut and torture a cow of the complainant, in breach of the 1st clause of the Ordinance 7 of 1862." The Magistrate (*Lee*) held as follows: "The defendant is proved to have slashed at this animal with a knife, and to have cut it while trespassing on his enclosed plantation. The acts inflicted pain on the animal and were unnecessary. Hence there has been a clear infraction of the Ordinance. Guilty. Sentenced to pay a fine of Rs. 30." *In appeal*, the judgment was set aside; and per STEWART, J.—"The cow, according to the evidence, was trespassing in the defendant's cultivated enclosure, and appears to have been wounded by the defendant on the impulse of the moment whilst driving it off. No cruelty or torture, as contemplated by the Ordinance, has been proved. See Matale, P. C., No. 71183, per Supreme Court, February 4, 1873, Grenier's Reports, p. 9; and per Supreme Court, Panwila, P. C. 14464, August 12, 1873."

Grave digging.

P. C. Panadure, 21315. The defendants were charged with having, on the 17th June, 1873, at Remum, "wickedly and maliciously damaged, injured and spoilt a grave, wherein the complainant's mother had been buried, in breach of the 19th clause of Ordinance No. 6 of 1846." At the trial, the defendant's Proctor raised the objection that the plaint did not disclose an offence under the Ordinance, as the grave was not the actual property of the complainant. But the Magistrate (*Morgan*) held that "the digging of a grave wherein it has been shown to the satisfaction of the Court that a corpse had been interred, where the defendants had no cause or excuse for digging it, is an offence under the 19th clause of Ordinance 6 of 1846," and accordingly convicted the defendants. *In appeal*, affirmed.

Security to keep the peace.

P. C. Colombo, 8995. The plaint was "that the defendants did, on the 14th day of June, 1873, at Mahara, assault and beat complainant. The Magistrate (*Fisher*) held as follows: "The first and second accused are found guilty. As it is impossible to discover who commenced the assault, it is ordered that the 1st and 2nd accused give bail in Rs. 50, and one surety in Rs. 50, to be of good behaviour for three months. Third and fourth accused are acquitted." *In appeal*, per Stewart, J.—"Altered by the 1st and 2nd accused being ordered to find security to keep the peace in the sum and for the period required by the Magistrate, instead of for their good behaviour. The 104th section of the Ordinance 11 of 1868 authorises a Police Magistrate to bind parties as therein pointed out to keep the peace, but no provision is made for a Magistrate binding over for good behaviour."

October 2.

Present Stewart and Cayley, J. J.

Wrong dismissal.

P. C. Panwila, 14566. This was an appeal against the following order by the Police Magistrate (*Power*)—"15th September, 1873. Parties present and not ready. Postponed to 15th October, 1873. Complainant now absent. Case struck off." Per Stewart, J.—"Set aside and remanded for further hearing. The first portion of the entry, under date 15th September, shows that the case was postponed to the 15th October. This possibly may have led to the appellant's subsequent absence on that day."

Fiscal's Ordinance.

P. C. Panadure, 21472. The charge was "that the defendants abovenamed did, on the 20th instant, at Rawelawatta, resist and obstruct the complainant in the execution of the warrant No. 20829,

directed to him by the defendant, Fiscal of Panadure, in breach of the 23rd clause of Ordinance 4 of 1867." For the defence it was contended in the Court below, that the plaint was defective in that the complainant was not described as a Fiscal's officer. *In appeal*, against a conviction, per STEWART, J.—"Affirmed. The complainant was for the time being employed as an officer by the Fiscal."

October, 7.

Present STEWART and CAYLEY, J. J.

P. C. Matale, 4808. The charge was "that the defendant was, on the 14th instant, found on the Spring Mount Estate for an unlawful purpose and not being able to give a satisfactory account of himself, in breach of Ordinance 4 of 1841, clause 4, section 6." For the defence a witness (Muttoosamy) was called, who deposed as follows:—"I know defendant. He goes about charming people, and curing people of devils. * * * I have seen the devils come out of a man.' The Magistrate (*Temple*) convicted the accused and sentenced him to one month's hard labor, in the following terms: "defendant, from his own admission, has remained on the estate after having been told to leave on several occasions, and the fact of his going about curing people is not to be tolerated, as Tamil Coolies believe in it, and I have known many cases of serious illness being brought on from fright owing to these foolish charms." *In appeal*, per STEWART, J.—"Set aside. The practice of administering charms in order to effect cure, though very absurd, cannot be regarded as unlawful." Vagrant Ordinance.

P. C. Gampola, 24910. The defendant was charged, under the 37th clause of Ordinance 7 of 1873, with having kept open his shop, in which intoxicating liquors were sold, at 9. 50. p. m. *In appeal*, against a conviction, *Kelly*, for appellant, submitted the argument contained in the petition of appeal, which was to the effect "that all that the Ordinance required was that the shop should be closed *after* the hour of eight at night and *before the hour of five in the morning*." If these words were strictly construed, as they ought to be, occurring as they did in a penal statute, the plaint disclosed no offence. Per CAYLEY, J.—"Affirmed. The words 'shall be closed after the hour of eight at night and before the hour of five in the morning' are ambiguous; being capable of two constructions. They may either be taken as representing a single act, or as representing a continuous state; that is, they may either refer to the act of closing or to the state of being shut up: and as the latter meaning, though not grammatically the most obvious, is clearly the one contemplated by the Licensing Ordinance.

Legislature, this Court is bound to adopt it under the general rule that the words of the Ordinance ought, if possible, to be construed in such a manner as will not lead to any manifest absurdity. The words thus taken would mean that arrack shops, etc., shall be kept shut (i. e. shall not be kept open) after 8 o'clock at night and before 5 in the morning."

Disorderly conduct.

P. C. Panwila, 14645. The charge was "that the defendants did, on the 25th September, at Panwila, in the public street, behave in a riotous and disorderly manner, in breach of the 6th section of the 53rd clause of Ordinance 16 of 1865." The 1st defendant while pleading sought to justify the disorderly conduct complained of (which consisted of a fight in the public road) by alleging provocation on the part of the 2nd defendant, who was represented as having "put his hands to his back and then turned round to 1st defendant's shop and put his fingers to his nose." *In appeal*, against a conviction, it was submitted by appellant, in his petition of appeal, that the plaint should have been laid under the 2nd clause of Ordinance 4 of 1841, and not under the Police Ordinance of 1865. Per CAYLEY, J.— "Affirmed. The appellant has pleaded 'guilty under provocation.' No provocation would justify riotous and disorderly behaviour in the public street, and the plea must be taken as one of guilty absolutely. This plea has cured the defect in the plaint, which is referred to in the petition of appeal."

Labor Ordinance.

P. C. Nawalapitiya, 18156. Nine coolies were charged on the following plaint: "that defendants did, on the 18th August, 1873, leave complainant's service without notice or reasonable cause, in breach of clause 11 of Ordinance 11 of 1865." It transpired in evidence that Mr. Black, the present superintendent of Wannarajah Estate and the virtual complainant in the case, had succeeded Mr. Kelly from whom he had received a cheque for Rs. 1850 in payment of certain advances which had been made to one Mari Cangany, who had procured the accused coolies for the Estate. The defence appeared to be that the cheque in question had been given and accepted for the discharge of both Mari Cangany and his coolies, and that therefore the defendants were not liable to be prosecuted. The Magistrate (*Penney*) held as follows:—"The Court is of opinion that as Mari Cangany is allowed to have received the Rs. 1850 and to have had that entered as a debt against him, even although the coolies' names were entered on the check roll, he (Mari Cangany) was in reality the proprietor, so to speak, of the coolies brought both by him and his agents, his sub-canganies. He had to wipe off the debt by means of the coolies he

brought. Mr. Black in receiving the cheque from Mr. Kelly, in the opinion of the Court, declared Mari Cangany free to go; and as it is absurd to suppose that Rs. 1850 would be paid for the sole purpose of obtaining one man, the natural conclusion is that that sum when paid freed both him and those employed by him. Mr. Black gave no intimation that certain coolies intended to stay, and the payer of the cheque naturally concluded he would get all the men obtained by Mari Cangany by means of a sum equal in amount to his cheque. The accused are acquitted, and the complainant is adjudged to pay their costs."

In appeal, *Ferdinands*, for appellant, submitted the following affidavit from Mr. Kelly:

I do hereby make oath and swear that on the 18th of August last, I sent to the Superintendent of "Wanne Rajah" Estate the sum of rupees eighteen hundred and fifty, being the full amount due by Marie Cangany *and all his under Canganies* to the "Wanne Rajah" Estate. In the letter enclosing the cheque, I stated that I sent that amount in settlement of the accounts of Marie Cangany and his under Canganies. My cheque was accepted, and no communication was ever made to me that any Canganies or Coolies would not be paid off: my letter dated August 18th was put in in evidence and should be attached to the case. The Coolies in question belong to under Canganies who all belong to Marie Head Cangany. These under Canganies have all had their accounts settled, I having paid their debts in the round sum of Rs. 1850 sent in August 18th. To my letter enclosing the cheque and stating that it was in settlement of all accounts of Mari Head Cangany, and his under Canganies, I never received any reply, and that cheque for payment in full being accepted without any reply or comment, I swear that I considered myself entitled to Mari Head Cangany, his under Canganies and all their people willing to come: the sum of Rs. 1850 being the full amount of everything due by them and having liquidated the debts of the Coolies now in question.

(Signed) L. H. Kelly.

Grenier, for respondent, stated that he would not object to a rehearing.

Cur. adv. vult.

Per Stewart, J.—(October 14th)—"Set aside and case remanded for further hearing on both sides, and judgment de novo. From the evidence it would appear that the names of all the accused were entered in the Check Roll of the Wanna Rajah Estate, and that the defendants were actually employed on that estate immediately preceding the date of their alleged desertion. The circumstance of the defendants having been brought to the estate by Mari Cangany or his Agents cannot affect the liability of the defendants and their obligation to serve their employer, they having once entered his service. The cangany and the coolies of his gang are alike servants within the meaning of the Ordinance, bound to serve the prescribed time; neither

the one nor the other being at liberty to quit the service of his employer without due notice or leave, or reasonable cause. It is evident that the defendants, at any rate the 1st, 2nd and 3rd, were aware of the necessity for giving notice. These three defendants had, along with several other coolies, given notice of their intention to leave the estate. The other coolies who had joined in the notice were duly paid off on the 18th August, except these defendants who had sometime before withdrawn their notice, and consequently were regarded as if they had given no notice. The remaining defendants do not appear to have given any notice at all. On the above facts the Supreme Court would have no difficulty in coming to a decision, but for the other question raised on behalf of the defendants, whether when the Superintendent (Mr. Black) received the cheque for Rs. 1850, which was on the same day as that on which the defendants are charged with leaving complainant's service, he either expressly or by reasonable and necessary implication released the defendants from further service on Wanna Rajah. On this point fuller evidence than what is now before the Court is requisite, to allow of any satisfactory conclusion being found. Mr. Black says, 'Mr. Kelly sent me a cheque for Rs. 1850 to pay off Mari Cangany's debt.' Was any money then due by the defendants or any of them? And, if so, was such sum comprised in Mr. Kelly's cheque? Or was the cheque only received in liquidation of Mari Cangany's individual debt? Was this payment made and received with the knowledge of the defendants? And did anything pass between them, Mr. Kelly and Mr. Black with reference to this money? How came Mr. Kelly to give the money? All that transpired between the several parties should be ascertained as fully and clearly as may be possible, with the view of determining whether either Mr. Black or Mr. Dunbar in any way assented to the defendants leaving the estate. The letter referred to in Mr. Kelly's affidavit should be produced."

October 14.

Present STEWART, J.

Master Attendant's Ordinance.

J. P. C. Colombo, 83. The plaint was "that the defendants did, in the roadstead of Colombo, on the night of the 27th September, 1873, in the canoe No. 38, go alongside of the barque 'Coniscliffe' before she was visited by the Health Officer of the port, in disobedience of the Master Attendant's order dated 11th September, 1873, and in breach of the 24th clause of Ordinance 6 of 1865." The order referred to, as filed in the case, was as follows.

I hereby give notice that from this date no boat or canoe shall communicate or go alongside of any vessel arriving in the port of Colombo, until after she anchors in a proper berth and has been visited by the Health Officer of the port, and the vessel reported by him to be free from infection. The tindal and boatmen of any boat disobeying these orders shall be liable to the penalty prescribed by law.

(Signed.) James Donnan,
Master Attendant.

Master Attendant's Office,
Colombo, 11th September, 1873.

In appeal, against a conviction by the Magistrate (*Donnan*) *Grenier*, for the appellants, contended that the port-rule in question was illegal, as not having reference to any acts ejusdem generis with those specified in the 24th clause of the Ordinance. The power to make such a regulation as that of which a breach was alleged, was vested in the Government alone, under the 6th clause which required a proclamation in due form one month at least before the regulation could take effect. Indeed, an order identical with that of the Master Attendant had been enacted by the Government and published in the Gazette of the 27th September, thus impliedly shewing that Captain Donnan had no authority to act in the matter. But even supposing that the rule alleged to have been infringed was legal, there was not an iota of evidence to shew that the Health Officer had not visited the ship before the defendants went alongside of her.

Per Stewart, J.—"Set aside and case remanded for further hearing. The words in the early part of the 24th clause of the Ordinance No. 6 of 1865 seem sufficiently wide to embrace such an infraction of the order of the Master Attendant as that charged; but there should be some evidence to prove that the defendant came alongside of the vessel before she was visited by the Health Officer."

Malicious Injuries Ordinance.

P. C. Mullaittivu, 8301. The plaint was "that the defendant (a road overseer) did on the 30th of July, at Kanakararen Coolem, unlawfully and maliciously cut and destroy the palmirah olas and fruits of the complainant's garden, in breach of the 14th clause of Ordinance 6 of 1846." The Magistrate (*Smythe*) held as follows: "Defendant had no business to cut olahs without complainant's permission. There is a bad feeling between the parties. Complainant has very much exaggerated matters, and I think a fine of Rs. 5, which is hereby inflicted on defendant, will meet the ends of justice." *In appeal*, *Grenier*, for appellant.—The Magistrate in his judgment found that the defendant had cut only olahs, which according to the evidence for the defence (not disbelieved) had been used for patching up

water baskets used on road work. The 72nd clause of the Thoroughfares Ordinance authorized road officers to remove materials from adjacent lands. [But would olahs come within the meaning of the term materials?—STEWART, J.] The cutting of timber was expressly sanctioned, and if a tree could be cut surely the leaves thereof might be removed. The complainant was applied to for permission to cut, but it appeared that he neither granted nor withheld such permission. There was certainly no malicious injury proved. Per STEWART, J.—"Set aside. The Magistrate does not find that the act was malicious, nor is there sufficient evidence that the act was so; the contrary rather appears from the finding of the Magistrate."

Toll. *P. C. Matara*, 72131. The plaint was "that the defendant (a toll-renter of Akuresse) did, on the 31st March, unlawfully demand and take toll from the complainant after previous payment was made at Talliggawille for the same bandy, contrary to the clauses 9, 17 and 18 of Ordinance 14 of 1867." The Magistrate (*Swettenham*) held as follows: "The toll at Talliggawille appears to be one of those authorized by Ordinance 14 of 1872, although no proclamation has been made to declare collection at that place. I have searched in vain for any provision that paying toll at Talliggawille should clear Akuressa or vice versa. There is nothing to render defendant's conduct illegal or even morally wrong. Defendant is acquitted." *In appeal*, per STEWART, J.—Affirmed.

October 21. 1873

~~Present~~ STEWART, J.

Maintenance. *P. C. Galle*, 85580. The accused was charged, under the Vagrant Ordinance, with not maintaining his wife and child. The defence was that the husband and wife, who had married in 1868, had shortly after the birth of their first child separated by mutual consent, when under a notarial deed sufficient provision, it was alleged, had been made for the support of the wife. The complainant's father deposed as follows: "The parties lived together about two years and separated five or six years ago. Complainant's mother is alive. Defendant is possessed of property, and so is complainant. There was a deed written between the complainant and defendant prior to the separation. Since that deed was written complainant has lived with me. She did not bring back any property. The child was 6 or 7 months old at the time of separation. Defendant went to Anuradhapoora and Colombo." This was the only evidence in the case, the Magis-

trate (*Lee*) recording that "the facts were not contradicted and that the deed was admitted by complainant."

In appeal, against a conviction, (*Layard* for appellant, *Grenier* for respondent) per Stewart, J.—"Set aside and the case remanded for further hearing. The Supreme Court concurs with the Police Magistrate in holding the deed void. But as by that document the complainant agreed to retain her own property (from the evidence it would appear she has property) separate from her husband, and to forego her right as well as that of her child to maintenance from the defendant, who may therefore have supposed that his wife and child were being supported from the property thus set aside, the Supreme Court considers, under the circumstances, that this case should go back for further en quiry generally, and also as to whether any demand was made for maintenance from the de fendant, and whether he was aware that his wife and child were being maintained by others. The value of complainant's property referred to by the 1st witness (father of complainant) is not stated. No doubt in general a demand for maintenance is not necessary, the offence consisting in the party leaving his wife or child without support whereby they become chargeable to others. If, however, the husband or father has in fact made sufficient provision for his wife or child, and bona fide was under the belief that they were being supported as had been arranged, the case would both in law and reason stand on a different footing, there being neither the mens rea nor mens conscia necessary to render a party criminally liable. It will be seen that there is no difference in reality between the judgments of the Supreme Court in the Panwila cases referred to. In 4890 (II *Bel.* 93) the ordinary rule was laid down. The other case (4577, *Ibid* 87) was of a special character, the wife having left her husband no less than ten years before, taking her child with her."

P. C. Puttalam, 6440. The charge was "that the defendant did, on the 3rd October, 1873, at Puttalam high road, behave in a riotous and disorderly manner, in breach of the 2nd clause of Ordinance 4 of 1841." The order of the Magistrate, (*Pole*) refusing a summons on the plaint, was as follows: "Complainant states—defendant scolded me with filthy words. Nothing else. Case dismissed." *In appeal*, per Stewart, J.—"Set aside and case remanded for hearing. The plaint discloses a legal offence. The examination of the complainant is so scanty that it affords no sufficient facts to allow of any safe conclusion being drawn. It will be seen that the 2nd section of the Ordinance No. 4 of 1841 is in the disjunctive, providing for the punishment not only of persons behaving in a riotous manner, but also

Disorderly conduct.

for the punishment of persons behaving in a disorderly manner in the public street. Whether the conduct of the accused, having regard to the language used, his tone, demeanour and acts, amounted to disorderly behaviour in the public street, can only be safely determined upon a consideration of all the circumstances as they may be proved in evidence."

October 28.

Present STEWART, J.

Gambling. *P. C. Chilaw*, 9467. The charge was "that the defendants"—(nine in number)—"did on the night of the 7th October, at the house of the 1st defendant in Vattically, which is used as a promiscuous gaming house, engage at a game of chance with dice, in breach of the 4th section, 4th clause of Ordinance 4 of 1841." The Magistrate (*Wragg*) found the accused guilty and sentenced them to a fortnight's imprisonment each, excepting the 1st who was sentenced to pay a fine of Rs. 50 and to be imprisoned at hard labor for six months. *In appeal*, (*Grenier* for appellant) per STEWART, J.—"Affirmed, save as to the sentence upon the 1st defendant, which is altered into the same as that passed upon the other defendants. The defendants were all charged with a breach of the 4th clause of the 4th section of Ordinance No. 4 of 1841. No charge was laid under the 19th section, nor does the plaint distinctly allege in the words of this section that the 1st defendant kept or used the house for the purpose of common or promiscuous gaming, etc."

Labor Ordinance. *P. C. Matara*, 72220. The defendant, who was described in the plaint as "a monthly paid servant under complainant as Toddy-drawer," was charged, under the 11th clause of Ordinance 11 of 1865, with having left his employer's service without notice. The complainant in his evidence stated:—"the defendant was employed under me as a monthly servant as Toddy-drawer. I used to pay defendant Rs. 3 a month and ½ of a penny for every gallon of toddy extracted." *In appeal* against a conviction by the Magistrate (*Jumeaux*), *Ferdinands*, for appellant, contended that the defendant in his capacity as a toddy-drawer would not come within the operation of the Servants' Ordinance. Sed per STEWART, J.—Affirmed.

Paddy-tax. *P. C. Balapitimodera*, 44456. The defendants were charged by a Government Paddy Renter, under the 14th clause of Ordinance 14 of 1840, with having cut, threshed and removed the paddy crop of a certain field, without giving notice or contributing the 1-10th share

due to Government. The complainant in his evidence having stated that he had appointed one Andris, though not in writing, as his Agent to collect the rent, the Magistrate (*Gibson*) acquitted the defendants, holding that the complainant had forfeited his right to prosecute under the provisions of the 13th clause of the Ordinance. *In appeal*, per STEWART, J.—"Set aside and case remanded for further hearing. It does not clearly appear from the examination of the complainant, whether Andris' appointment as Agent was notified by the renter to the principal headman of the division as required by the Ordinance. The prosecution, however, in this case has been instituted not by Andris but by the renter himself. The evidence should be heard. How the informal appointment (if such it be) of Andris as agent bears on the case is not shown in the present proceedings. If the renter had no duly qualified agent or the renter himself was absent, notice should have been given to the nearest headman. See 10th section of Ordinance 14 of 1840."

P. C. Batticaloa, 6248. The defendant was charged with having resisted the complainant in the execution of his duty as a Police Headman, in breach of the 165th clause of Ordinance 11 of 1868. The Magistrate (*Worthington*) held as follows: "The evidence established the fact that defendant did resist complainant in the lawful execution of his duty, but looking to the acts of complainant prior to the descent of defendants from the house they were thatching, to the illegality of the arrest of Armogam in the absence of a warrant, etc, I consider that the imposition of a fine will meet the requirements of the case. The question irresistibly presents itself also to my mind, would the complainant have been so zealous had the position been reversed, viz, Setukada people, complainants, v. Valeyurava people. Defendants are fined Rs. 10 each." *In appeal*, per STEWART J.—"Set aside. This is a charge for resisting the complainant in the execution of his duty in breach of the Ordinance 11 of 1868, section 165, according to which it is necessary that the resistance take place in the execution of some duty imposed by that Ordinance. The arrest of Armogam was not authorized by any of the provisions of the Ordinance referred to. The charge against him was only one of assault. No offence was committed by him in the presence of the complainant, nor did complainant find him manifesting any intention to commit a crime or a breach of the peace. See section 144. The evidence accordingly fails to show that the complainant was obstructed in the execution of any duty imposed upon him by the Ordinance 11 of 1868. It should be noted that the plaint is not laid under the Ordinance 4 of 1841, sections 7 and 12." Resisting Police Headman.

November 4.

Present CREASY, C. J., STEWART and CAYLEY, J. J.

Municipal Bye-laws. Previous conviction pleaded.

B. M. Galle, 2914. The defendant was charged under clause 2 of Bye-laws chapter 22, with having failed to construct a new drain through the premises No. 315, although he was required to do so in writing on the 9th September last. For the defence it was contended that a previous conviction in case No. 2846 was a bar to the present prosecution. *In appeal*, against a conviction, per STEWART, J.—"Affirmed. The original order was produced, and is now in the proceedings. The offence now charged is for not constructing a drain as required by notice in writing served on 9th September. The case No. 2846 was in respect of a distinct charge under notice served on the 5th May.

Paddy Ordinance, 14/40

P. C. Kalutara, 49425. The defendants were charged, under the 2nd and 6th sections of Ordinance 14 of 1840 with having cut and threshed their paddy crop without notice. The Magistrate (*Power*) acquitted the defendants, on the ground that the wrong clause of the Ordinance had been quoted and the amount of the tax had not been stated, adding "that in the absence of the latter the Court cannot punish, as the punishment must be regulated by the amount due." *In appeal*, per STEWART, J.—"Set aside and case remanded for further hearing, with liberty to the complainant to move to be allowed to amend his plaint by substituting the correct section and Ordinance infringed. The offence charged consists in defendants having cut and threshed his crop without giving due notice. The extent of the crop and the value of the Government share, are only necessary to be ascertained for the purpose of punishment and need not in strictness be stated in the plaint."

November 5.

Present CREASY, C. J. and STEWART and CAYLEY, J. J.

Preservation of Game Ordinance.

P. C. Puttalam, 6413. The plaint was "that the defendant did on the 14th day of September, 1873, at Aramuthuwavakille, kill game without a license and possess meat of game which they could not account for satisfactorily, in breach of the 3rd and 6th sections of the 11th clause of Ordinance 6 of 1872." The Magistrate (*Smart*) held as follows: "The Ordinance in the 5th clause is thus worded: no person shall kill game out of the division of the Korale Vidahne Arachchi or Udaiyar in which he resides without a license. So that, so far as I can understand, by this villainously worded Ordinance any one may kill game without license within the division of the Koralle,

&c., in which he resides. Now this elk was shot by 3rd defendant, Eramuthuwewa, within the Wadawutchia Palata (in which 3rd defendant lives) and consequently within the jurisdiction of the Koralle of the Talawanne Pattoo; so that it would seem that defendant has not committed a breach of the Ordinance. The Ordinance is framed apparently with a view to the mode of division of the Western and Central Provinces, for there is no such officer as the Koralle, Vidahne Arachchi or Udaiyar in this part; but if the true intent of the Ordinance is followed, I conclude that one who kills deer within the jurisdiction of the Koralleship in which he resides commits no breach of the Ordinance. It is difficult to conceive the use of the enactment, if this be the meaning of the Ordinance, for natives never travel far from their villages for shooting, and now that they have such liberty granted to them by the Ordinance the preservation of game will not be in the least assisted in the non-close season. Defendants are found 'not guilty' and are acquitted. I hope an appeal will be taken to settle the point." *In appeal*, per CAYLEY, J.—"Affirmed. It is not alleged in the plaint, nor proved by the evidence, that the elk was killed out of the division of the Korale, Vidahn Arachchi, or Udaiyar in which the 3rd defendant resided. Under the 5th section of the Ordinance No. 6 of 1872, persons are prohibited from killing buffaloes, without a special license, either within or without such division; but elk and deer may be killed in the open season without any license, if killed within the division of the Korale, Vidahn Arachchi or Udaiyar, in which the killer resides. It appears that there is no officer with the title of Koralle, Vidahn Arachchi or Udaiyar, in the district within which these defendants reside; but the Supreme Court thinks that the words Korale, Vidahn Arachchi or Udaiyar may be considered distributively; and in the present case it was proved that the elk in question was shot within the division of the Korale in which the 3rd defendant, the killer, resided."

November 11.

Present CREASY, C. J., STEWART and CAYLEY, J. J.

P. C. Galle, 85877. Five defendants were charged with assault. The Magistrate (*Lee*) having disbelieved the evidence entered a verdict of acquittal and condemned the complainant to pay each of the accused 50 cents. *In appeal*, per CREASY, C. J.—"Affirmed. The acquittal was clearly right. As to the order on the complainant to pay the defendants 50 cents each, the appeal urges that there was no proof of the defendants having been put to any actual cost, but the loss of a man's time and the trouble which he is put to by having to attend the Police Court come fairly within the term 'reasonable expenses' in the Police Ordinance 18 of 1871, clause 4." Costs.

Informer's share.

P. C. Matara, 72602. This was a charge for a breach of the 5th clause of the Ordinance No. 2 of 1836. The Magistrate (*Jumeaux*) having found the defendant guilty, in that he had used short measures, sentenced him to pay a fine of Rs. 20, of which Rs. 5 was ordered to be paid into the Police Fund, the complainant being a Police Inspector. *In appeal*, per STEWART, J.—"Affirmed, but so much of the judgment as directs that Rs. 5 of the fine be paid to the Police Fund is set aside. The Ordinance does not authorise any portion of the fine being paid to the informer."

Case struck off.

P. C. Jaffna, 2985. This was an appeal against the order of the Magistrate (*Murray*) striking off the case. Per CREASY, C. J.—"Affirmed. The complainant, through his counsel, agreed to give up the case."

Labor Ordinance.

P. C. Gampola, 25024. The plaint was as follows: "that the defendant, being a journeyman artificer bound (by a written contract executed in the manner prescribed in the 7th section of the Ordinance No. 11 of 1865, and hereunto annexed, marked A) to serve the complainant, did on the 10th day of October, 1873, quit the service of the complainant, without leave or reasonable cause, before the end of his term of service, and without working off or paying off the advances mentioned in the said contract, in breach of the 11th clause of the said Ordinance." The contract, which had been signed by the parties in the presence of Mr. PENNEY, Police Magistrate, was to the following effect: that the defendant, acknowledging the receipt from complainant of Rs. 83, bound himself to work off the advance by serving in the capacity of boot and shoemaker at one rupee and fifty cents weekly or six rupees per month; that the defendant agreed to accompany the complainant, whenever required, to Kandy, Pussilawa or Navalapitiya on being paid his expenses; and that the defendant should have the right of claiming his discharge at any time on paying up the amount due to his employer. The complainant in his evidence stated, "defendant was employed under me to make boots, as I am a bootmaker. He left my service without giving me notice. He was bound under me on the written contract I have filed. I had only recovered from defendant Rs. 15 of his advance. *Cross-examined.*—On the 8th ultimo, (8th September) he told me he would leave my service, but did not pay me his advance as agreed before leaving." The Magistrate (*Neville*) found the defendant guilty and sentenced him to 3 months' hard labor. *In appeal*, per CREASY, C. J.—"Affirmed. This case clearly came within the Ordinance."

Arrack Ordinance.

P. C. Pussilawa, 9314. This was an appeal against a conviction and sentence under the 29th clause of Ordinance 10 of 1844, the defendants having been charged with retailing arrack, for the purpose of being consumed on the premises within which the same was sold, without a license from the Government Agent of the Central Province. Per STEWART, J.—"Affirmed. The charge should have been laid under the 26th and not under the 29th section of the Ordinance. The error, however, is not one that could have in any way prejudiced the substantial rights of the defendants."

Security to keep the peace

J. P. Jaffna, 11074. This was an appeal against an order of the Justice of the Peace requiring heavy security from the accused to keep the peace, under the provisions of clause 223 of Ordinance 11 of 1868. Per CAYLEY, J.—"Affirmed. The defendants, four in number, after a previous assertion of their intention, came at night on two occasions and twice removed a stile which the complainant had put up to protect his field during the crop season. The stile, after its first demolition by the defendants, had been restored with the sanction and under the directions of the Police authorities. The fact that the defendants claim a right of way over the place where the stile is erected, will not excuse this violent assertion of their supposed right; and it is difficult to conceive any act more likely to occasion a breach of the peace than those committed by these defendants. The Justice of the Peace was accordingly fully justified in binding over the defendants to keep the peace."

November 14.

Present CREASY, C. J., STEWART and CAYLEY, J. J.

Licensing Ordinance.

P. C. Newera Eliya, 8904. The plaint was "that the defendant did, on the 2nd day of September, 1873, at Odupussilawa, sell a bottle of intoxicating liquor on credit or trust, in breach of the 25th clause of Ordinance 7 of 1873."* It appeared from the evidence that the accused had supplied Mr. John Findlay with a bottle of brandy on a written order which, however, was not produced. Findlay's evidence was to the following effect. "I had dealings with Armugam Chetty, the master of defendant, in general stores, etc. I did not pay for the bottle of brandy, or send the money. I sent for it on my account. The defendant's principal was away at the coast at the time and I do

* The defendant had previously been charged in case No. 8899, under the 10th clause of the Licensing Ordinance, for selling the bottle of brandy in question without a license and had been acquitted.

not know how our accounts stood. I had sold 275 bushels of Coffee of this season to defendant's principal. He had partly paid in cash for the Coffee. He left the Island on a sudden, and did not settle accounts with me, and I received goods from him from time to time of which account was to be taken afterwards. I have no dealings with defendant, and have no accounts with him, and look upon him as the shopman of Armogam Chetty. I cannot say how my accounts stand with him. There may be a few rupees due on either side." The Magistrate (*Hartshorne*) convicted the defendant, and fined him Rs. 50.

In appeal, Grenier, for appellant.—There was no credit asked for or given in this case, as it appeared that there were monies in the hands of the defendant or his principal due to Findlay who, according to his own evidence, had agreed to receive goods from time to time in liquidation of the debt. But apart from this, the 25th clause could not be taken to apply to the defendant, who was neither a licensed dealer nor a tavern keeper. Per STEWART, J.—"This is a charge laid under the Ordinance 7 of 1873, section 25, which enacts that 'if any licensed person or any keeper of a tavern shall sell any intoxicating liquors on credit,' etc. The plaint, however, does not allege, nor is there a word in the evidence to prove, that the defendant was either a licensed person or a keeper of a tavern."

Appeal.

J. P. Negombo, 8793. The defendant had been charged on an affidavit with cattle stealing. The Justice of the Peace (*Ellis*) after hearing the evidence of the complainant and his witnesses discharged the accused, holding that he believed the case to have been entirely got up by the peace officer of the village. *In appeal*, by the complainant, per CREASY, C. J.—"No appeal lies in a case like this."

Appeal.

P. C. Galle, 85315. This was an appeal against the following order of the Magistrate (*Lee*) "Complainant not ready. Struck off. The case has been postponed time without end, and I will give no further postponement for any cause whatever." Per CREASY, C. J.—"It is ordered that the appeal lodged in this case on the 6th November, 1873, be dismissed."

November 18.

Present CREASY, C. J. and STEWART and CAYLEY, J. J.

Ordinance preventing destruction of fish.

P. C. Point Pedro, 13194. The plaint was "that the defendant did, on the 21st September, at Vallevuttethurrie on the North-eastern side of Parrethurrie, within the jurisdiction of the Court and within a

league from the shore, use a net in the sea commonly called "veele valey" in catching fish, in breach of the 2nd clause of Ordinance 19 of 1866 and the Proclamation of 30th October, 1869." The Magistrate (*Drieberg*) held as follows: "The offence with which the defendants are charged is one exceedingly difficult of proof, as is evidenced by the fact that there has been as yet no conviction under this Ordinance. All the facts in the case are clear, and the only point on which there is a conflict of evidence is as to whether defendants were picked up within 3 miles of the shore or beyond 3 miles of the shore. The evidence on the point that the defendants were picked up within a mile of the shore, coupled with all the circumstances of the case, is conclusive to my mind as to the guilt of the defendants. The offence in question is one which acts very prejudicially on the fishing trade, and the defendants must be severely punished. The defendants are accordingly adjudged to be guilty and are sentenced to pay a fine of Rs. 30 each." *In appeal*, per STEWART, J.—Affirmed.

Timber Ordinance. Jurisdiction.

P. C. Matara, E. The defendant was charged, under clause 2 of Ordinance 24 of 1848, with having unlawfully cut timber on Crown land without a license or permit. The Magistrate (*Jumeaux*) refused to entertain the charge in the following order. "The Ordinance requires that the Deputy Queen's Advocate should grant a certificate that he elects to try the case in the Police Court. There is no certificate from the Deputy Queen's Advocate, but only one from the Assistant Government Agent. See No. 71,746, P. C. Matara, in appeal, dated September 5, 1873." *In appeal*, per CREASY, C. J.—"Set aside and case sent back for hearing. In the case in Grenier's Reports, which has been referred to, there was no certificate by any one at all. In the present case there is a certificate by the Assistant Government Agent, which is quite sufficient under the terms of Ordinance 11 of 1868, clause 99, in a matter which affects the revenue."

November 26.

Present CREASY, C. J. and STEWART and CAYLEY, J. J.

Cattle trespass.

P. C. Avishawella, 16993. The defendant was charged, under the 4th clause of Ordinance 2 of 1835, with having allowed two head of cattle to trespass at night in the Police Magistrate's premises. The Magistrate (*Byrde*) held as follows. "In this case the defence set up is that the prosecution should prove that a fence protected the land or that the land by local custom required no fence. It is obvious that

at the present time there is no fence on two sides of the Magistrate's premises; but inasmuch as the previous Magistrates put up and kept a fence to protect their flower garden (it seems that the fences were put up by prisoners at the Magistrates' discretion for the convenience and pleasure of the Magistrate then residing) and since the withdrawal of the prisoners from labouring on Government grounds, it cannot be maintained that the public have a right to send their cattle to graze on Government premises, disturbing the rest and peace of the resident Magistrate." The defendant was accordingly found guilty and sentenced to pay a fine of Rs. 5. *In appeal*, (*Ferdinands* for appellant) per CAYLEY, J.—"Set aside and verdict of acquittal entered. Before persons can be criminally convicted under the Ordinance No. 2 of 1835, the requirements of that Ordinance must be strictly complied with; and no person can be fined for cattle trespass, unless it is proved that the land trespassed on is protected by such a fence, if any, as the local custom may prescribe. In the present case the land is not fenced, and there is no proof that the local custom dispensed with any fence. Indeed, it appears from the evidence called by the defendants and from the letter of the Police Magistrate that the land formerly used to be fenced. The Police Magistrate appears from his letter to suppose that, if the owners of trespassing cattle cannot be convicted under the Ordinance, there is no redress for the evil complained of. But any person who has been injured or annoyed by cattle trespass has his civil remedy, including the right of distraining the cattle damage feasant; for the Ordinance 2 of 1835 has not taken away any civil remedy which the original party may have at common law, (5468, C. R. Batticaloa, S.C. Min. 31 May, 1866) but has merely provided a more summary mode of procedure."

Labor Ordinance.

P. C. Matale, 5291. The defendant, a cangany, was charged, under the 19th clause of Ordinance 11 of 1865, with having seduced away from complainant's service a cooly named Adappen, who appeared to be a boy of about 12 or 15 years of age. The Magistrate (*Penney*) found as follows. "The Counsel for the defence having stated that the witnesses he proposed to call are to give evidence only to the fact of Adappen having volunteered to accompany the accused, the Court considers that their evidence need not be taken. Considering the facts of the case, the Court does not attach much importance to the statement made by Adappan, that the accused offered him money and other things to accompany him, as this was very probably put forward by Adappen as an excuse for his own fault of desertion. The fact, however, remains that the accused was found with the boy Adappan

in his company in the middle of the night away from that boy's estate, and it is a most reasonable supposition to presume that some encouragement or at least consent must have been given by the accused to Adappen before he left his master's estate with him. The accused must have been well aware that Adappen had no permission to leave the Estate, and the Court is of opinion that his act came within the operation of the 19th clause of Ordinance 11 of 1865. The accused is convicted and fined Rs. 50 and to pay the expenses of complainant." *In appeal*, (*Grenier* for appellant) per CAYLEY, J.—"Set aside and sent back in order that the proposed evidence for the defence may be heard. If after hearing the evidence the Police Magistrate is satisfied that the accused in any way induced the boy Adappen to leave his master's service, the accused should be convicted. But mere assent on the part of the accused to allow the boy to accompany him, is not sufficient to render him criminally liable under the 19th clause of the Labor Ordinance."

December 2.

Present STEWART, and CAYLEY, J. J.

Costs.

P. C. Panadure, 21911. A charge of assault was dismissed by the Magistrate (*Morgan*) who, believing the case to be a false and frivolous one, made order as follows: "defendants are acquitted and discharged, and complainant is fined Rs. 15 to be given over to the defendants." *In appeal*, per CAYLEY, J.—"Affirmed. The complainant is not fined under the 106th clause of Ordinance 11 of 1868, but he is ordered to pay Rs. 15 to the defendants which the Police Magistrate no doubt considered to be the amount of their reasonable expenses. It is competent to a Police Magistrate to award such expenses at the trial of the case under the 4th clause of Ordinance 18 of 1871."

Implied substitution of Complainant.

P. C. Galle, 85539. The defendants were charged, on the 24th July, 1873, with assault. After several postponements, the following order was made by the Magistrate (*Lee*) on the 20th August.

Complainant present Defendants reported to be in concealment. Extended to 17th September.

I have since understood that the complainant is dead. Some one has answered to her name when the case was called in the morning. Let warrant of arrest issue to defendants, and let complainant's brother prosecute.

The case came on for trial on the 22nd November, when after the evidence for the prosecution had been closed the defendants' Proctor took the objection that the proceedings were irregular, and that, in the absence of the complainant on the record, the case should have

been struck off. The Magistrate, however, convicted the accused, who were each sentenced to three months' hard labor and to pay a fine of Rs. 50.

In appeal, Grenier, for appellant.—There had been in point of fact no substitution on the record of a new complainant; and the legal objection had been taken at the trial. The irregularity could not be held as cured by the defendants having pleaded, for even where one prosecutor had been substituted for another, the Chief Justice was of opinion (*Worthington's Case*) that the proceedings should be quashed as illegal. That opinion, though not adopted by a majority of the Court at the time, had recently been cited with approval by Mr. Justice CAYLEY in P. C. Matara, 71720 (August 19th); and it was open to the Supreme Court to reconsider the point.

Sed per STEWART, J,—"Affirmed. The order of August 20, 1873, must be taken as equivalent to an amendment of the plaint."

December 9, 1873

Present: STEWART and CAYLEY, J. J.

M. P. C. *Galle*, 8578. This case, (which is reported at page 97) having been sent back for rehearing, the Magistrate (*Lee*) after recording further evidence gave judgment as follows. "The evidence in this case is very simple, but the points of law which have arisen are of considerable interest. The defendant is indicted, under section 2 of the 3rd clause of Ordinance 4 of 1841, for deserting his wife and child. By a deed of agreement, dated the 8th January, 1868, the parties agreed to separate. By the 1st clause of that deed, it was agreed that each party should receive back the dowry presents which are expressly termed jewelry and moveables. No further provision was made by the husband. There is a provision for the dissolution of the community of property and an undertaking on the part of the wife not to prosecute for maintenance of herself and child. In the decision given by me on the 25th September, I stated at length my reasons for holding this deed void in law, and on that point the Appellate Court approves my ruling. It is proved that the defendant has not since the date of this separation made any provision for his wife and child. The Supreme Court reversed my former finding, as I apprehend, on the ground that there was no evidence of *mens rea*, and that there was evidence that the wife had property of her own and that defendant might reasonably have supposed that his wife and child were maintained out of the proceeds of that property. I have re-examined the wife's father, and it is explained that he has property but that his daughter has nothing but the dowry property she brought back with her,

valued at Rs. 450. It is clear that this property was not enough to maintain the wife and child for more than five years. Supposing it to have been enough, it is still questionable whether the indictment would not have been sufficiently supported by the evidence as regards at least the child, the wife being one of the "others" in the section under which defendant is indicted. This is a point of some importance which still awaits authoritative settlement. The Supreme Court expressly reversed the decision in a Matara Case, while holding that a mistress was comprehended in the word "others." It is further to be remarked that this dowry property was part of the wife's paraphernalia —part of the luxury to which her station entitled her—and I am not prepared to hold that it is competent for a husband to throw his wife on her own resources and subject her to menial service for her maintenance, when his means and her position entitled her to exemption from that service. It is true that the words of the Ordinance are "without maintenance," but I take it that "maintenance" signifies maintenance in the station to which she is entitled, and that where the husband has the means he is bound to furnish his wife with those means and not make her chargeable to others for what are to a delicately nurtured woman *necessaries*. In this connection I have referred to Lord Penzance's judgment in Kelly v. Kelly (L. T. R. xxi, N.S. 561), and I think my views in this matter are supported by that high authority. This being so, I am unable to perceive any grounds for attributing to the defendant a bona fide belief that his wife was not supported by others. He must have known her circumstances. It was his duty to enquire into them, and if he did not enquire his previous knowledge of her as well as a process of calculation as to the proceeds of the dowry property would have shown him that his wife and child could not but be chargeable to others. It has been stated by the learned Counsel who has ably set before me every argument in favor of the defendant that she has her recourse in the District Court for alimony. Truly she has ; but why should she be driven to use the cumbrous and tardy machinery of that Court, when she has a speedy method of bringing her husband to his senses ? I do not forget the danger of this Court being made the scene for a preliminary trial of a suit for the restitution of conjugal rights, but where an offence has been committed, it is clearly my duty to punish the offender. I may add that I find that complainant had no property of her own beyond the jewelry rendered back to her by her husband ; and that I disbelieve so much of Janis' evidence as goes to show a demand for maintenance. I find the defendant guilty. He is sentenced to pay a fine

of Rs. 5, Rs. 4 of which I allot to complainant. I further order that the defendant do pay to the complainant her reasonable expenses."

In appeal, (*Layard* for appellant, *Grenier* for respondent) per CAYLEY, J.—" Affirmed. The Police Magistrate has found as a fact that the complainant's property was not sufficient for maintenance of herself and her child, regard being had to the condition in life of the parties (see 8713, P. C. Harrispattu, S. C. Minutes, 8th November, 1866); and it is also clear that the defendant must have known this, knowing as he did the amount of the wife's property."

December 16.

Present STEWART and CAYLEY, J. J.

Conviction inconsistent with plaint.

P. C. Galle, 86821. The defendant, who was the driver of a carriage, was charged under clause 8, chapter 23, of the Municipal Bye-laws with having refused to let his vehicle on hire to complainant. The Magistrate (*Lee*) gave judgment as follows: " I find defendant guilty of assault. It is clear that Mr. Scott gave the accused a severe beating after he (accused) had attacked him; and hence I do not punish him as severely as I otherwise should. Fined Rs. 10." *In appeal*, (*Grenier* for appellant) per STEWART, J.—" Set aside. The defendant is charged in the plaint with refusing to let his vehicle on hire to the complainant, in breach of a Municipal bye-law. The defendant, however, has expressly been found guilty of assault, an offence not charged nor even alluded to in the plaint. The conviction is accordingly set aside. The proceedings are also irregular, in that the plaint does not bear the requisite stamp."

Theft.

P. C. Newera Eliya, 8894. The plaint was " that the defendants (three in number) did, on the 28th day of February, at Nuwera Eliya, steal one table cloth of the value of Rs. 20, the property of the complainant; also that the 1st defendant did have and receive the said property, knowing the same to have been stolen." It appeared from the evidence that the complainant (*Hawkins*) had given the cloth in question to his dhoby, the 2nd defendant, to be washed; that subsequently, the 2nd and 3rd defendants were seen selling the same to the Rambodde rest-housekeeper, the 1st defendant. In the course of the investigation, the complainant's Proctor moved to withdraw the charge against the 3rd defendant and make him a witness in the case. The Magistrate (*Hartshorne*) however refused the motion, and, having found the 2nd and 3rd accused guilty, sentenced each of them to

twenty-one days' hard labour. *In appeal*, (*Grenier* for 3rd appellant) per STEWART, J.—"Affirmed as to the 2nd defendant; set aside as to the 3rd defendant. The charge against the 3rd defendant is not for receiving, but only for theft. There is no evidence to show that this defendant stole the table cloth. The evidence points to the 2nd defendant as the actual thief."

Forcible entry.

P. C. Kandy, 96119. The question in this case was whether the Agent of a Receiver appointed by the District Court of Kandy was justified, while taking possession of a Coffee Estate, in using force to the extent of breaking open the door of the Estate bungalow and threatening to kick out the complainant if he did not leave. The plaint, as filed of record, was as follows:

"That the 1st defendant, aided and abetted by the 2nd, 3rd, 4th and 5th defendants, did on the 21st instant take forcible possession of certain moveable property belonging to Mr. H. E A. Young, Senior, and also of the Bungalow on the Keremettia Estate, of which the complainant then had the possession and occupation as the Agent of Dr. Dodsworth, who is the proprietor of the said Estate, in breach of the Proclamation of the 5th August, 1819.

On the case for the prosecution being closed, the defendant's Proctor addressed the Court, justifying the conduct of the accused, and contending that the plaint was defective in that the words "without the authority of a competent Magistrate" and "to avenge themselves for an injury," were omitted. The complainant's Proctor, who was heard in reply, moved to be allowed to amend the plaint; but this was disallowed by the Magistrate (*Stewart*) who held as follows: "It is not denied that the first defendant was employed by Mr. Duncan, a Receiver appointed by the District Court, to take charge of the crops, and of the Keremattia estate, and that to carry out the functions of a Receiver, the 1st defendant on the day in question proceeded to the Estate in company with the 2nd defendant, the former Superintendent, and the 3rd defendant, the agent of Messrs Mackwood and Co., the mortgagees of the Estate. Besides the question of amendment lastly raised, a question of law more important, and which is connected with the one of fact, has also been raised in this case, namely, whether a Receiver has the right also of possession. The Court will first consider this question, as in the consideration of it, it will be necessary to see how far possession, alleged to have been forcible, was necessary or incidental to the exercise of the functions of a Receiver, that office implying competent authority, the absence of which,

it is important to remark, creating the offence. For its exercise, it cannot be denied that possession was necessary, and if not expressed it must be implied, as incidental powers need not be expressed. It could not have been expected or intended that the Receiver should receive the crops and without having a place to go to to occupy the estate. Nothing could be more inconsistent with the power conferred. Possession therefore was not inconsistent but necessary in the exercise of the power; and this brings the Court to the consideration of the question how far the evidence under the circumstances supports the charge. It is evident that the defendants acted bona fide, with only apparently an honest determination of simply doing their duty in as harmless and inoffensive a manner as possible: one and all seem to have been actuated by the same forbearance. There is nothing to warrant the conclusion that they committed or even meant violence, and intimidation was neither attempted nor effected. On the contrary, it would appear that complainant was anything but intimidated; for, acting under the advice of his friend, he sought to be ousted, returned to have that formally effected, and actually courted it; but even then, when a different action might have been excusable, first defendant led him out, according to complainant himself, simply holding him by the arm, and that too after the authority had been produced and read. Such forbearance was certainly not consistent with force. It was more consistent with what appears to be the fact, that they were acting in accordance with the law than at variance with it. That should be the reasonable inference under the circumstances, especially in view of the forbearance that has been proved by complainant's own evidence; the law presuming, where an authority exists, as in this instance, to take possession, that such authority was legally and properly exercised till the contrary has been satisfactorily shewn. It is not like the case without any authority, and it is where parties act without even the semblance of one that the proclamation was intended to apply. The only witnesses called are complainant and his friend, Mr. Edema. They contradict each other in more than one important point, and the contradiction in regard to the key is as important as it is significant. It negatives the statement that force was used in opening the door. It would also appear that 2nd defendant had property of his in the bungalow. The Court will now consider the question of amendment under the existing rules. It is aware that amendment may be permitted at any stage of a case; but this rule, it does not think, was meant to operate in a case like the present, where any number of amendments could not help the complainant, could not alter or mend

facts, his own, nor make that an offence which nothing in the case, either in law or fact, could convert it into. As already indicated, the charge of forcible possession is without the least foundation. The rule was intended to prevent a failure of justice where an offence was clear, and hence the wisdom of, and the necessity for, the rule. But in this case, to permit the amendment would be to defeat the object of the rule and to favour oppressive and frivolous litigation. The defendants are found not guilty."

In appeal, Grenier, for appellant.—The plaint was no doubt defective, but the motion to amend having been made before judgment, the Magistrate should have allowed it. The 1st defendant *(Maitland)* had no authority from the District Court, and only pretended to act as the Agent of the Receiver (*Duncan*) of whose appointment, however, no record whatever had been produced at the trial or formally put in evidence: not even Maitland's alleged agency had been legally established. The complainant had proved the use of such force on the part of the accused as would justify a conviction under the Proclamation. The Fiscal, as the ministerial officer of the District Court, was the proper party to have placed the Receiver in possession; and any resistance then by the complainant or others would properly have been punished as contempt of Court.

Sed per CAYLEY, J.—"Affirmed. The Supreme Court has repeatedly held that a charge under the Proclamation in question must allege that the entry was made "without the authority of a competent Magistrate." See 4374, P. C. Ratnapura, Beling and Vanderstraaten, p. 73. The plaint in the present case is defective in this respect. No amendment was applied for until the case for the prosecution was closed, and the counsel for the defendants had addressed the court; and, in view of the special circumstances of this case, and particularly of the fact that the defendants acted under the bona-fide belief that they had the authority of the District Court, the Supreme Court does not think that the discretion of the Police Magistrate in refusing the amendment at so late a stage should be interfered with."

P. C. Matara, 72795. The charge was "that the defendant did, on the 3rd day of December, 1873, at Matara Carawe, keep or suffer to be kept a land or garden in a filthy state or overgrown with rank or noisome vegetation, so as to be a nuisance to, or injurious to the health of, the persons in the neighbourhood, in breach of the 1st clause of Ordinance 15 of 1862." The Magistrate (*Jumeaux*) held as follows: "The evidence already adduced, together with defendant's second

Defective plaint.

plea," (of guilty) "put the matter beyond all doubt. The Assistant Government Agent interceded on behalf of all the parties cited to-day under similar charges, and I consented to let them all off with nominal fines on condition they pleaded guilty, so that should the thing recur again they could have no excuse. Defendant however refused to plead guilty, and wished to fight out the matter. He is found guilty (beyond all doubt), and sentenced to pay a fine of Rs. 10."

In appeal, per STEWART, J.—"Set aside, and case remanded for further hearing. That the defendant is the owner or occupier of the land in question is sufficiently to be inferred from his being charged in the plaint with keeping the land in a filthy state, in breach of the clause of the Ordinance referred to. The evidence adduced establishes the fact: such an objection is too late after conviction. It does not, however, appear from the proceedings that the land is in or near any road or public thoroughfare. This is a circumstance that should be established, and the case is accordingly remanded for that purpose, as well as for further evidence generally. Dr. Keith should himself be examined, instead of his opinion being taken second hand, as seemingly has been done. The plaint should be amended by its being added (if such be the fact) that the land is in or near a road, street or public thoroughfare, (in terms of the Ordinance.) We have further to point out that it is the duty of the Magistrate to try causes laid before him and to adjudicate upon the evidence, and it is no part of his duty, and it is altogether irregular for him, to consent "to let parties off with nominal fines on condition that they pleaded guilty." Accused parties should be quite unfettered, and left to plead guilty or not of their own free will, uninfluenced by any promise or expectation of clemency."

December 23.

Present STEWART and CAYLEY, J. J.

Forcible entry.

P. C. Galagedera, 19338. A conviction, on a charge of forcible entry under the Proclamation of August 5th, 1819, was set aside by Mr. Justice Stewart in the following terms: "The plaint is defective, in that it does not state that the land was in the occupation of the complainant. The evidence also on the plaint is of a very uncertain character. The defendant, it would appear, lives on a portion of the land, and it is not shewn that the complainant occupies or resides on any part. Besides, according to the last witness for the prosecution, the six lahas (where the 1st defendant resides) was the portion where the defendant picked coffee." (*Ferdinands* for appellant.)

Wrong dismissal.

P. C. Puttalam, 6559. This was a charge of assault and cocoanut stealing. On the morning of the day fixed for the trial, the complainant happening to be absent when the parties' names were called the case was dismissed. Shortly after (on the same day) he tendered an affidavit, explaining that he had been unavoidably delayed ten minutes, having had to come to Court from a great distance, but the Magistrate (*Pole*) refused to interfere in the following order: "complainant brings an affidavit which is torn up. He was absent when the case was called. The case has been dismissed." *In appeal*, per CAYLEY, J.—"Set aside and sent back for trial. Assuming the complainant's affidavit to be true, we think that he sufficiently accounted for his absence when the case was called on. He appears from his affidavit to have been only 10 minutes late. The absence of the original affidavit having been accounted for, we have assumed the copy filed to be correct."

Timber Ordinance.

P. C. Kalutara, 49704. Four defendants were convicted under the 5th section of Ordinance 24 of 1848, and were each sentenced by the Magistrate (*Power*) to pay a fine of Rs. 50. *In appeal*, per CAYLEY, J.—"Altered by the amount of fine being reduced to Rs. 50, as one fine for one offence, and it is adjudged that the defendants do pay the said sum. Affirmed in other respects. The offence charged is felling a tree on Crown land without a license, and is in its nature single, and the penalty imposed by the Ordinance must accordingly be taken to be single. See B. and V., per S. C. Balepitimodera, P. C. 23132, citing Rex v. Clark, 2 Cowp. 612."

Disorderly conduct.

P. C. Kalutara, 49991. This was a charge of "riotous and disorderly conduct" under the 6th clause of Ordinance 16 of 1865. The Magistrate (*Power*) having proceeded to try the defendant then and there without summons, convicted him in the following judgment. "The accused, who is still drunk and has disturbed the Court for the greater part of the day, is found guilty and sentenced to 3 months' hard labor." *In appeal*, per CAYLEY, J.—"Set aside and conviction quashed. In this case a new plaint correctly worded should be entered and regularly proceeded with after summons to the defendant. The charge is laid under the 6th clause of Ordinance 16 of 1865, but this clause has no application to the offence complained of. It is, no doubt, a mistake for the 6th article of the 53rd clause. This article, however, has been expressly repealed by Ordinance 7 of 1873, and a

different punishment prescribed for the offence in question. It is however irregular to bring a man to Court for being drunk and disorderly and to try him then and there, while he is still drunk, as the Police Magistrate states was the case in the present instance, and consequently unable properly to conduct his defence, if he has any."

Preservation of Fish.

P. C. Point Pedro, 13321. The plaint was "that the defendants did, on the 20th instant, at Katcovalam on the north-eastern side of Pallalethurey within a league from the shore, use a net in the sea commonly called "valie valey," in catching fish, in breach of the 2nd clause of Ordinance 19 of 1866, and the Proclamation dated 20th October, 1869." The Magistrate (*Drieberg*) acquitted the accused in the following judgment: "By the Proclamation of October 1869, (see Gazette of November 6, 1869,) the use of the net in question is "prohibited within one league of the shore to the East of Pallalethurey on the N. W. coast of the peninsula of Jaffna." In this case the defendants are charged with having used the net called "valie valey" at Katcovalam, on the N. E. of Pallalethurey within one league of the shore. According to the Map of Ceylon published by Smith and Son, Charing Cross, the extreme Eastern limit of Pallalethurey is Point Pedro, or the point locally known as 'Devil's Point,' (see Tamil map of Ceylon, published at Madras by S. John, 1872,) and Katcovalam is South East of this point. As I interpret the Proclamation, it appears to me that Katcovalam does not come within its operation." *In appeal*, per STEWART, J.—"Set aside and remanded for hearing. If the net was used within a league of the shore to the East of any part of Pallalethurey, it appears to us that the accused would be liable under the Proclamation. We also think that if the place where the net was used was not more to the North than to the East of the Pallalethurey shore, the case would still be within the Ordinance."

December 31./873

Present CREASY, C. J., STEWART and CAYLEY, J J.

Maintenance. Jurisdiction.

P. C. Negombo, 29055. The defendant was charged, under the Vagarant Ordinance, with not maintaining his wife and child. The only witness in the case was the brother of the complainant, and he deposed as follows: "The defendant's permanent residence has been Colombo. The complainant used to live there with the defendant, but the defendant struck her. The complainant then went to live

with her parents at Udugampolla in this district. I am sure Colombo is the head-quarters of the defendant and that he never lived with the complainant in this district. He has deserted her for several years, and lives with a mistress." The Magistrate *(Leisching)* held as follows: "According to the evidence of the only witness called, the alleged offence did not take place within the jurisdiction of this Court, and the fact that previous cases were tried in this Court is no bar to defendant's taking the plea of jurisdiction. The defendant takes the objection and pleads want of jurisdiction on the part of this Court. Objection upheld. Defendant discharged." Maintenance. Jurisdiction.

In appeal, by complainant, per STEWART, J.—"Set aside and remanded for further hearing. The complainant, it would appear, has since her separation, several years ago, from her husband (the defendant) resided in the district of Negombo, though she had lived before in Colombo with the defendant who still lives there. It is not suggested however, nor is there any ground for supposing, that the complainant merely changed her residence to the village where she now lives for the purpose of instituting this prosecution in the Police Court of Negombo with the view of harassing the defendant. The Ordinance under which the plaint is laid makes it an offence for any person, who is able to support his family, to leave his wife or child without maintenance, whereby they shall become chargeable to others. No particular place is specified. We must conclude, therefore, that in whatever place the wife or child of a person is left destitute, such person would render himself liable under the Ordinance and be committing an offence in the place where he leaves his wife or child without maintenance. The plea of jurisdiction is accordingly over-ruled, and the trial will proceed in due course. As respects the merits of the case, the Magistrate's attention is requested to the judgment of the Supreme Court in Pantura P. C. 4620, December 3rd, 1863, reported in Beling's Handy Book, Part 2, page 40."

P. C. Galle, 85468. Twenty-five defendants, who were liable to pay the poll-tax and who had not elected to commute, were charged, under the 54th clause of Ordinance 10 of 1861, "with having failed to attend to perform labor at the time and place appointed for that purpose." *In appeal*, by the 4th defendant who had been fined Rs 4, the judgment was set aside; and per CREASY, C. J.—"This man has been convicted without any evidence having been taken and without a plea of guilty. The joinder of this large number of defendants in one charge was seriously improper, there being no proof that they were acting in concert with each other." Commutation Rate. Irregular conviction and misjoinder of defendants.