Ceylon Supreme Court

THE

APPEAL REPORTS

FOR 1872,

BEING

REPORTS OF CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF CEYLON

SITTING IN APPEAL.

EDITED BY

S. GRENIER, Esq.,

ADVOCATE.

PART I.

CONTAINING

THE REPORTS OF POLICE COURT CASES.

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1872.

ADVERTISEMENT.

THE APPEAL REPORTS FOR 1872,

(INCLUDING THE ARGUMENTS OF COUNSEL IN ALL THE IMPORTANT CASES DECIDED BY THE COLLECTIVE COURT.)

Edited by S. GRENIER, *Advocate.*

Part I.—Police Courts. Part II.—Courts of Requests. Part III.—District Courts.

Part I, with a full and complete Index, will be ready for delivery to subscribers on the 10th of January, 1873.

Parts II & III will be published shortly after.

The Appeal Reports will be continued to be published annually in 3 volumes similar to those for 1872.

[Having resolved somewhat late in the year to publish these reports in their present form, I have had to contend with the disadvantage and delay attendant upon procuring from outstation courts copies of a large proportion of cases the facts of which were not recited in the Supreme Court judgments or included in my own notes. I hope, however, to be able to avoid this inconvenience in future, by consulting the original records before they are dispatched from the Registry. I have undertaken this work with a sincere wish to serve the Profession; and no effort will be wanting on my part to make the Appeal Reports for 1873 more full and complete than those for the current year.—S. G.]

Colombo, December 31st, 1872.

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THE APPEAL REPORTS.

1872.

POLICE COURTS.

January 10.

Present CREASY, C. J.

P. C. Colombo, 32513. The defendant was charged with having slaughtered a bullock, within the police limits of Mulhiriyawa, without a license as required by the Ordinance No. 14 of 1857. He appeared, however, to have acted bona fide under a license, which he believed to be sufficient, from the Police Vidahn of Buttegamme, and the Magistrate thereupon acquitted him. *In appeal*, the judgment was affirmed. License to slaughter cattle.

P. C. Matara, 69556. Held that a Diver was not a servant within the meaning of the Ordinance No. 11 of 1865. A Diver not a "Servant."

January 17.

Present CREASY, C. J.

P. C. Kurunegala, 17032. The defendant was charged with having prevented the Deputy Coroner (the complainant) from holding an inquest, by locking up the building in which the dead body was hanging and by refusing to allow the Deputy Coroner and jury to have access to it. The evidence in the case was conflicting, but the Magistrate having recorded a verdict of guilty, his decision on a question of fact was held to be irreversible. Obstructing a Coroner. (Payne's case.)

January 24.

Present CREASY, C. J.

P. C. Colombo, 33018. The defendant had been convicted, under clause 166 of the Ordinance No. 11 of 1868, of having wilfully given false information to a police officer with intent to support a false accusation. It appeared that the defendant untruly told the police officer (complainant,) that he had been robbed of three boxes. He did not mention any one as the thief, nor did he name any one as suspected by him; and it also appeared that no person had been charged with the theft by any one whatsoever. *In appeal*, the Chief Justice set aside the conviction in the following terms: "I have discussed the case with my colleague, Mr. Justice TEMPLE, and his False information.

been or is accused, there is no accusation at all, and this conviction for supporting a false accusation must consequently be set aside."

Receiving stolen property.

P. C. Colombo, 33383. The plaint charged the 1st defendant with having stolen certain property, and the 2nd and 3rd defendants with having received the same with guilty knowledge. The Magistrate found that there was no evidence against the first defendant and discharged him. The 2nd and 3rd defendants were found guilty and sentenced to one month's imprisonment at hard labor. *In appeal*, the judgment was affirmed; and per CREASY, C. J.—"The appellants' guilt consists in having knowingly received stolen property, not in having received property which had been stolen by some particular person."

Plea.

License to possess firearms.

P. C. Galagedara, 17753. Held that it was irregular to take a plea of guilty in a Police Court case, subject to the opinion of the Supreme Court; and that the exemption in the first proviso in section 2 of Ordinance 22 of 1848 should be taken to extend to the defendant, who had been proved to be a licensed "manufacturer of or dealer in arms," for as such the word "armourer" used in the record must be understood.

Jurisdiction.

P. C. Galle, 79709. Held that where, according to the evidence, a "severe wound with a knife" had been inflicted, the case ought to have been sent before the District Court.

January 30.

Present CREASY, C. J.

Maintenance.

P. C. Mallaham, 21442. Held that it would be a good defence, in a case of maintenance, for the defendant to prove that his wife had left him and was living in adultery. See R. v. Flintan, 1 B. & A, 227.

February 6.

Present CREASY, C. J.

Maintenance. Effect of admission by deft.

P. C. Matara, 69858. The defendant, in a maintenance case, in Court and in the presence and hearing of the Magistrate, added to his plea of not guilty a statement that he had transferred property for the support of the child. This statement was regarded as evidence against him, and as an admission that the child was his and that he was legally bound to support it. A conviction in this view, after a regular trial, was, *in appeal*, affirmed.

Gambling.

P. C. Galagedara, 17336. There was no cross-examination to show that a witness, whose sole evidence supported the charge (gambling,) spoke only from hearsay, when he said in his examination in chief "I knew that shed was used for gambling and I have previously complained about it to the Police." A conviction on such evidence

Theft.

P. C. Colombo, 33677. Where a defendant was charged with having stolen a certain number of bricks, the property of the complainant, and the Magistrate, having heard only the complainant's evidence, acquitted the defendant, holding that no theft was disclosed, the Supreme Court set aside the judgment and sent the case back for further hearing, pointing out that the complainant had a right to have his witnesses examined, especially if he could prove, as he offered to do in his petition of appeal, that the defendant had sold the bricks as his (the defendant's) own and appropriated the money.

Resisting a Fiscal's officer.

P. C. Colombo, 31707. The defendant was charged, under clause 23 of Ordinance 4 of 1867, with having resisted and obstructed the complainant in the execution of his duty as an officer of the Fiscal, by forcibly removing five pieces of jackwood, which had been seized and sequestered under writ 53512 of the District Court of Colombo. The evidence for the prosecution disclosed that the jackwood had been entrusted by a Vidahn Arachchy (who had originally effected the sequestration at the instance of the Fiscal) to complainant, who in turn had given it for safe keeping to a third party who stated that he had left the timber on the ground where it had been seized and that he had not seen the defendant removing it. The defendant, subsequently, admitted the removal by himself but questioned the right of the Fiscal to have sequestered. The Magistrate found the defendant guilty, and sentenced him to pay a fine of Rs. 20 and to be imprisoned for one day. *In appeal*, the judgment was set aside; and per CREASY, C. J.—"The defendant may be punishable for having received goods which were in the custody of the law, but it would be a dangerous straining of a penal statute to hold that the defendant's conduct in this case amounted to "making or inciting resistance or obstruction" under the 23rd section of the Fiscal's Ordinance."

February 13.

Present CREASY, C. J.

Forcible entry.

P. C. Kegalla, 33512. Held that charges of forcible entry were not affected by section 119 of Ordinance 11 of 1868.

Plea.

P. C. Matara, 69894. The defendant was charged with having left some gunny bags on the road, in breach of section 4, clause 53 of the Police Ordinance. He pleaded not guilty, but added that the bags were his and that they were on the *drain*. The Magistrate thereupon held as follows: "the drain is a part of the road, so this (the plea of not guilty) must be recorded as a plea of guilty, and defendant is fined Rs. 10." *In appeal*, the judgment was set aside and case sent back for trial; and per CREASY, C. J.—"No Judge has any right to order a defendant's plea of not guilty to be recorded as

a plea of guilty, against the defendant's will. What the defendant said may be evidence against him, but the Police Magistrate ought to try the case regularly, and hear such witnesses as may be brought forward on both sides."

Toll.

P. C. Colombo, 329. Defendant having admitted that he had demanded and received half a rupee as toll on complainant's bicycle, the Magistrate held him guilty of an unauthorised act in the following judgment :—"The defendant considers he was entitled to demand toll for the bicycle, as coming under the description 'every vehicle not enumerated above' given in the 4th clause of the Toll Ordinance. I was certainly at first inclined to take this view, as it seemed to be borne out both by the definition given in the 3rd clause of 'vehicle for passengers,' and by the fact that no *species* of vehicle is particularised in the 4th clause, the only limitation or qualifying words being according as the conveyance was drawn by horses, oxen or elephants. But on referring to the Chilaw Police Court case No. 7788 (quoted by complainant's counsel,) I find it laid down by the Supreme Court that the words "vehicles not enumerated above," in the Ordinance No. 14 of 1867, must be construed with reference to the use of the words in the former part of the Ordinance, and taken to apply only to vehicles drawn by horses, oxen, elephants or other beasts of burden. Following that construction, therefore, defendant was not entitled to demand any toll in the present instance. He is accordingly found guilty and adjudged to pay a fine of fifty cents." *In appeal*, per CREASY, C. J.—"The Magistrate was quite right in his interpretation of the Ordinance. According to the appellant's construction, a man might be made to pay toll for passing along on a pair of crutches."

Trading on Sundays.

P. C. Galle, 79864. The defendant, who was a licensed wine-seller, was charged, under the 88th clause of the Police Ordinance, with having publicly pursued his trade on a certain Sunday, and with having received into his shop some drunken sailors who created a disturbance during the hour of divine service in an adjoining church. He was convicted and fined Rs. 20, the Magistrate holding that "the defendant was carrying on his business within hearing of a place of worship during service." *In appeal*, the judgment was set aside ; and per CREASY, C. J.—"There is no evidence whatever that the defendant, or any one acting under his orders, was present. All that is proved may have taken place without his knowledge and against his will."

Defective plaint.

P. C. Colombo, 270. Where a plaint was defective on the face of it and could not be amended, consistently with the facts, so as to bring it within the Ordinance under which it was laid, the Supreme

Court set aside the Magistrate's conviction and directed that a judgment of acquittal be entered up. Held, also, that "an open lane" was not such a place as the 6th section of clause 4 of Ordinance 4 of 1841 applied to.

P. C. Galle, 78929. This was a charge by a wife against the husband for maintenance. The evidence for the prosecution shewed that the wife had left the defendant's house, because she had been "ill-treated," and further that the defendant had a mistress. The Magistrate found as follows: "It appears that complainant left defendant (her husband,) subsequent to which he took to himself a mistress. This mistress defendant is ready to give up, if his wife will return. She refuses to do so. Defendant is discharged." *In appeal*, the judgment was set aside and case sent back for further hearing; and per CREASY, C. J.—"There is no evidence to show that the defendant had offered, before the period of desertion for which this charge was brought, to put away his mistress and take back his wife. The witnesses should be closely questioned, as to the real extent and nature of the ill usage which made the wife leave the house." Maintenance.

P. C. Galle, 72263.—The following judgment of the Chief Justice fully sets out the facts of the case. "That the judgment of the 12th day of January, 1872, be set aside, and the case sent back for further hearing. The Supreme Court observes with regret that this Police Court case has been pending since April 1870, that is for nearly 2 years. It has come on for trial three times in the Police Court. On the first occasion, the defendant was convicted but no plea was recorded and no witnesses were heard. On the second occasion, the complainant only was heard; and even the whole of her evidence was not recorded, as appeared from a letter of the Police Magistrate in answer to inquiries made by this Court. The decisions of the Police Magistrates on both of those occasions were appealed against, and on both occasions this Court sent the case back. It came on, for the third time, on the 12th of January last, and the Police Magistrate, instead of regularly trying the case, only re-examined the complainant as to some evidence given by her on the former trial; and then, because she failed to explain it, he refused to hear her witnesses and acquitted the defendant. A third appeal was the inevitable result, and the case must now go back a third time. I have no doubt but that all the three Magistrates, who have thus hastily and imperfectly dealt with this case at various times in the Galle Court, were actuated by a laudable wish to save public time; but such "compendia" are almost always "dispendia," and the surest way to administer speedy as well as true justice is to try cases regularly, and to hear the witnesses on both sides fully and patiently. In sending this case back for a fourth trial, I shall endeavour to add such directions as may ensure the fourth trial being a final one. The complaint is brought under Ordinance 4 of 1841, Maintenance.

clause 3, by the mother of an illegitimate child, charging the defendant, as the father, with leaving the child without maintenance, so that it requires to be supported by others. It is necessary that the Police Magistrate should, before he convicts the defendant, be satisfied as to the paternity, and also as to the child requiring the support of others, that is to say of its being unable to support itself. It appears from the record that when the case first came on for trial, the defendant, on being called on to plead, stated in open court that the child was his, but that as she was grown up the Ordinance did not apply. It further appears from the record, that the girl was produced and that the complainant stated in open court that the child was fourteen years old and full grown. Neither of these statements is to be taken as conclusive against the party making it. To do so would be to try a criminal case upon admissions, a course which this Court has frequently censured as improper. But proof of what the parties to the case said, respectively against their respective interests, is evidence against them; and as these things were said in open court before the Judge and judicially recorded, judicial notice may be taken of the parties having said them, without calling witnesses to prove that they heard t' em said. It would at first sight appear, then, that there was good evidence against the defendant as to the paternity ; but when the case came on for trial the second time, the register of the child's birth (as then understood) was put in evidence, with intent, I presume, to shew the child's real age, and so to bear upon the question whether the child was able to support itself. That register describes the child as the child not of defendant but of one Adrian, and the complainant then said that when she registered this child (that is defendant's alleged child,) she gave the name of another man as its father. This seems naturally enough to have surprised the Police Magistrate who then was trying the case, but unfortunately, instead of taking down the whole of complainant's attempted explanation, or hearing any more witnesses, he at once acquitted the defendant. On the third trial, the complainant asserted that defendant's child was not the child registered as Adrian's child. As the case stands at present, on the question of paternity, there is, on the one side, the defendant's own recorded statement that the child is his, and, on the other side, there is the recorded conduct of the complainant about the register which, coupled with the contradictions in her stories, is calculated to throw suspicion on her case. It seems (after the defendant's statement) difficult to believe that he had not a child by the complainant, but there may be some question whether his child is the one in respect of which complainant now charges him. It is possible that the defendant may not have seen the child for several years, before he saw a child said to be his in the Police Court, and though he must have known the sex of his child he may have been mistaken as to the identity of the girl then produced. It is possible (I say nothing about probabilities) that the complainant may have a motive in passing off Adrian's child as defendant's child.

Defendant's child may be dead or may be earning its living, and she may be seeking to get money out of defendant by saying that Adrian's child is the defendant's. The Police Magistrate is requested to hear and consider the proofs on this subject which are already recorded, and also all further evidence that may be adduced by both parties on this question of paternity, and to state by his judgment what he believes to be the fact. Next, as to the question whether the child requires to be supported by others. It seems certain that it is not a young child, but it would appear not to have attained majority; though, if the register produced at the second trial really applies to it, it must have been at least eighteen years old when this case was brought, and it may be useful to observe that we have to consider what was the said child's condition in April 1870, and not what it is at the present time. No absolute rule can be laid down as to the liability of a father, under this Ordinance, in respect of a child that has attained puberty but is still under 21. I think, on mature consideration and in accordance with the opinion previously intimated by this Court, that in the eye of the law a child continues to be a child until it attains majority, so far as regards the relationship of parent and child under this Ordinance. But in proportion as a child's age increases, the probability increases that it supports itself or that it could do so, if proper means were taken to obtain employment. And if a child, whether girl or boy, works indoors or outdoors for its mother at home and renders services commensurate with the cost of its keep, I should be disposed to consider that it earned its keep and was self-supporting. On this principle, in the Matara case in 1860, where a man was convicted for neglecting to support several of his children, this Court set aside the conviction and the fine so far as regarded the elder children who appeared to be able to support themselves. This question, as to a child being able to support itself or really requiring the support of others, is one which must be determined in each case according to the circumstances of the case. Considerable regard must be had to age; but regard must also be had to sex, health, strength, locality and the numerous other matters which will occur to the good sense and observation of the Magistrate as he tries the case. He is requested to hear fully all the evidence that may be adduced on both sides, in addition to the materials already supplied by the record; and the Supreme Court feels no doubt but that his judgment, on both the questions of fact which arise here, will be satisfactory and conclusive."

February 20.

Present CREASY, C. J.

Headman's schedule to sell land.

P. C. Jaffna, 33. Held, under the provisions of the Ordinance 1 of 1842, that if the defendant (a headman) had any reason for not granting the Schedule therein referred to, he should have given a written statement of his reasons.

Secondary evidence.

P. C. Jaffna, 23212. Before any secondary evidence of a license could be legally admissible, the party possessing it should have had notice to produce the original and proof should be given of the service of such notice.

Arrack Ordinance.

Balapitimodara,—Held that a person might "dispose of" arrack in many ways without there being any sale, and might so bring himself within the operation of the Arrack Ordinance 10 of 1844.

Labor Ordinance.

P. C. Nawalapitiya, 17357. The plaint in this case was as follows: "that the defendants, being servants and canganies, did without reasonable cause neglect and refuse to attend, on the 1st of April, 1871, at Chrystler's-farm Estate, when and where they had contracted to attend in commencing work, in breach of the 11th clause of the Ordinance No. 11 of 1865." Mr. Martin, who was the complainant, stated that the defendants had come seeking to be employed under him and had engaged themselves to work from the first of April. He added "they were to receive wages from me which are usual in the district (Dimbulla) and were to have weeding contracts." The Magistrate acquitted the defendants in the following terms: "In this case defendants are canganies who, according to the statement of complainant, promised to leave the estate on which they were working and go with a fixed number of coolies to work on complainant's estate, and failed to act up to their promise. They are charged under clause 11 of Ordinance No. 11 of 1865. Defendants received no advances. Complainant's case discloses the most irregular and shadowy agreement with defendants. Such a contract was essentially one to be reduced to writing. Defendants were never servants of complainant, so as to be liable to the punishment laid down in the clause under which they are charged. Defendants are found not guilty and are accordingly acquitted." *In appeal*, the Supreme Court set aside the judgment and sent the case back for further hearing and consideration; and per CREASY, C. J.—"The accused appear to be Canganies by occupation, and as such to be servants within the meaning of the Ordinance. It is not necessary that at the time of the contract made, or at the time of the breach, they should have already become actually working servants of the complainant. To hold that would be to nullify the parts of the 11th section, which impose a fine on a servant who neglects to attend when and where he has contracted to attend in "commencing" work. But part of the consideration, for which these accused were to come to work for the complainant, was that they were to have weeding contracts. The agreement for the weeding formed an essential part of the agreement to come and work on the estate. If the weeding was to go on for more than a month (either according to express arrangement or according to usage and the customary nature of such work,) the contract between the parties

was a contract which, according to the 7th section of the Ordinance, ought to have been in writing, so as to make the accused liable under the 11th section. The Police Magistrate is requested to investigate the matter. The plaint ought to be amended by describing the accused as servants and canganies."

P. C. Colombo, 429. The defendant was found to have been in possession of an umbrella belonging to the complainant, within four months after its loss. There was evidence of an addition having been made to it, since the loss, which would partially alter its appearance. This was held to be proof that the finder (supposing the umbrella to have been merely lost and found,) took it and dealt with it with a dishonest purpose, so as to constitute a theft. The Magistrate having further believed that the defendant had set up a lying story to account for his possession, the conviction, *in appeal*, was affirmed. Theft.

February 28.

Present CREASY, C. J.

The B. M. Colombo, 7644. Held that the Fort Canal did not come within the meaning of the terms "stream, tank, reservoir, well, cistern, conduit or aqueduct," specified in clause 1, section 7 of the Nuisances Ordinance, 1862; but that any one who created a public nuisance, by polluting the water of the Canal, was liable to be indicted for a criminal offence at common law. Nuisance.

P. C. Kalpitiya, 3838. Held, under a charge for maintenance, that if a husband beat his wife and brought an adulteress under his roof, it would be legally equivalent to an act of desertion; that the wife, however, in such cases, was not a legal witness against the husband; and, further, that the Magistrate had no power to decree future alimony. Desertion. Future alimony.

P. C. Panadure, 19190. Held that the Supreme Court would not interfere with Police Magistrates' judgments, either on mere questions of value of evidence, or on account of the sentence, if the sentence were authorized by law. Police Court judgments.

March 7.

Present TEMPLE, J.

P. C. Negombo,—Held that, under the 1st clause of Ordinance 11 of 1865, the word "servant" had a very extensive meaning, and included a Dhoby employed to wash for a family. A Dhoby is a "Servant."

March 15.

Present TEMPLE, J.

P. C. Putlam, 5606. Where, apart from certain evidence which had been illegally received, there was sufficient proof before the Magistrate to justify a conviction, the Supreme Court, *in appeal*, declined to interfere with his finding. Evidence.

March 27.

Present TEMPLE, J.

Postponement. *P. C. Matara*, 70075. Held that there was no appeal against a Magistrate's order allowing a postponement, and that the Supreme Court would not interfere in such cases to issue a Mandamus unless on good cause shewn.

Autre fois. acquit. *P. C. Matara*, 70091. Held that the plea of autre fois acquit in the case (one of maintenance) had been improperly received; and per TEMPLE, J.—"A charge against a man for deserting his wife or child is a continuing offence and he cannot plead a former acquittal."

Toll certificate. *P. C. Gampola*, 22656. Held that a certificate from an "overseer," instead of from the "superintending officer," is insufficient in a defence to a prosecution under clause 7 of the Toll Ordinance 14 of 1867.

April 13.

Present CREASY, C. J.

Evidence of title. *P. C. Galle*, 79499. Held, in a prosecution under the Malicious Injuries Ordinance, that something more than the bare assertion of the defendant was necessary to justify the Magistrate treating the case as one of bona fide disputed title.

Refusing process. *P. C. Colombo, A.* Held that a delay of fourteen days, in preferring a complaint, might be a reason for watching the evidence with special vigilance, but did not justify the rejection of the case without a hearing.

Refusing process. *P. C. Avisawella*, 15652. A charge of assault had not been entertained, because the complainants could suggest no reason for the offence. *In appeal*, the order was set aside and the case sent back for trial, the Chief Justice remarking that to hold as the Magistrate did, would be to give impunity to wanton and unprovoked insolence and brutality.

April 29.

Present CREASY, C. J.

Irregularity in Plaint. *P. C. Galagedara*, 17965 The charge in this case was "that the defendants did, on the 18th of March, 1872, at the Galagedara Court-house compound, arrest complainant on a warrant No. 11086 (Kandy,) and remove him to Kadugannawa, without producing him before the Justice of the Peace at Galagedara, where he was arrested, in breach of clauses 155, 156 and 163, and did detain him in custody beyond 24 hours in breach of clause 167, of Ordinance No. 11 of 1868." The complainant appeared to have been in attendance at Galagedara as a

witness in a civil suit and also for the purpose of opening up a judgment which had been entered against him by default. The Magistrate held as follows:—"In this case defendants had arrested complainant in this Court-house. They then hurried him off, with indecent haste, without producing him before the Justice of the Peace at Galagedara in terms of the 155th clause, and very unnecessarily handcuffed him. They did not take him to Kandy, as they should have done, but took him to his village and then to Kadugannawa, where they used great unnecessary violence, by putting him in the stocks, which was in no way called for. They have actually not detained him quite the 24 hours, though had they been left to themselves they doubtless would have, as there only remained one and a half hours to go nine miles in. The disgraceful disregard of the intention of the 155th clause, which it is clear they only avoided as they wished to prevent complainant's giving the bail taken by the J. P. in 4003 yesterday; the gross contempt of the ordinary respect due to a court of justice and the presiding Justice of the Peace; the violence used, and the unnecessary delay in going to Kadugannawa instead of to Kandy directly; all lead me to consider it a case requiring a severe penalty. I believe they only went by Kadugannawa to evade being called back, thinking their route would not be traced. The first and second defendants, as Fiscal's officers serving warrant 11086, and third defendant, as their assistant, are found guilty of a breach of the 155th, 156th and 163rd clauses, and acquitted of a breach of the 167th clause, of Ordinance No. 11 of 1868. I allow them the benefit of the doubt in the case of the 167th clause. The defendants are severally sentenced to six weeks' imprisonment with hard labor." *In appeal*, it was urged that the Kandy Justice who had issued the warrant (Mr. Stewart) had jurisdiction over Galagedara, and that the requirements of the 155th clause of the Ordinance would have been met by the complainant being produced before him as "the Justice of the District within whose jurisdiction the arrest was made." The judgment of the Police Court, however, was affirmed; and per CREASY, C. J.—"This conviction is substantially right, though the charge against the 3rd defendant"—(a private person and not a Fiscal's officer)—"ought to have been laid under the 155th, 156th and 161st clauses of the Ordinance; but this irregularity has not prejudiced the substantial rights of the party, and it is therefore the duty of the Supreme Court not to alter the sentence on that account. (See 20th clause of Ordinance 11 of 1868.) The objection about the summons is frivolous. The record shows that the parties appeared and were ready for trial."

P. C. Matara, 70286. Held that "cases of assault where the knife was used, but no dangerous wound inflicted, might be properly sent to the District Court, but were beyond the jurisdiction of a Police Court." Jurisdiction.

Refusing process.

P. C. Colombo—An order of the Magistrate refusing process was set aside in the following terms: "It might be very useful if Police Magistrates had power to refuse process in cases that appeared to be frivolous, but the Legislature has not given such power. Here the plaint and the preliminary examination of the complainant both disclose an offence recognizable by the Police Court, and the Police Magistrate was therefore bound to entertain the charge."

May 17.

Present STEWART, J.

Conviction not consistent with charge.

P. C. Galle, 80403. Held that a person charged only with theft could not be convicted of receiving stolen property with guilty knowledge.

Postponement.

P. C. Colombo, 1618. Held that where complainant desired a postponement, he should apply to the Magistrate on an affidavit.

Wife presumed to have acted under authority of husband.

P. C. Panadure, 19471. Where a husband and wife had both been convicted on a charge under the Ordinance 10 of 1844, the Supreme Court set aside the finding as to the wife in the following terms: "the second defendant must be presumed to have acted (unless the contrary be made clearly to appear upon the evidence,) under the influence and coercion of her husband, the first defendant; the arrack having been sold in his presence and apparently under his authority. See Russell on Crimes, vol. 1, p. 33."

May 22.

Present STEWART, J.

A party bound over may be prosecuted in respect of same offence.

P. C. Jaffna, 308. Held that a defendant having been bound over to keep the peace upon an affidavit touching an assault on complainant, was no bar to a charge in respect of the same offence being subsequently tried in the Police Court. "Should the accused," added STEWART J., "be found guilty, the fact of security for the peace having already been given will be a proper circumstance to consider, and make allowance for, in determining the punishment."

Admission by deft.

P. C. Panadure, 19,453. A frivolous objection to the reception of Mr. Fonseka Modliar's evidence in the case having been upheld by the Court below, the Supreme Court set aside the judgment and remanded the case for further hearing, pointing out "that, even if Mr. Fonseka held an office of magisterial authority, any admission to him by the defendant would be admissible in evidence, if made freely and voluntarily."

P. C. Colombo,—Held that the Ordinance No. 18 of 1871 did not empower a Police Magistrate to refuse process merely because he thought the case frivolous, and that to justify such refusal it was necessary that the plaint, or the examination of the complainant, should disclose that no legal crime or offence or one not cognizable by a Police Court had been committed. Refusing process.

P. C. Matara, 70243. Held that the Ordinance No. 18 of 1871 did not make it necessary, where the Police Magistrate took down the plaint himself (as was done in this case,) that it should be signed by the complainant. Plaint.

P. C. Matale, 672. Held that husbands and wives were legal witnesses against each other in prosecutions for bodily injury inflicted by one upon the other. Evidence.

P. C. Gampola, 23123. An order of the Magistrate, requiring the defendant to give security for his good behaviour, was set aside as illegal; and per STEWART, J.—"The 104th section of the Ordinance 11 of 1868 authorizes a Police Magistrate in certain cases to bind over parties to keep the peace; but no such power is given to a Police Magistrate as to good behaviour." P. M. cannot demand bail for good behaviour.

May 31.

Present STEWART, J.

P. C. Galagedara, 17892. Held, in a prosecution under the 14th and 26th clauses of Ordinance No. 10 of 1844, that the offence was single and the penalty should accordingly be single. See B & V, I, 189. Reg. v. Clark, 2 Cowp., 612. Offence and punishment single.

P. C. Panadure, 19177. Where it did not appear, in a prosecution for trespass under the Ordinance No. 2 of 1835, that the assessment of damages had been made by the "principal resident headman of the village," and that three respectable persons had assisted at the assessment, as contemplated in the 3rd clause by which the attendance of such persons, if procurable, was made necessary, the Supreme Court remanded the case for further hearing. Damages for trespass.

June 4.

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

P. C. Matara, 70406. The defendants were charged with having unlawfully cut and removed timber from a crown chena. Their proctor, on the case for the prosecution being closed, declined to call any evidence, relying on the fact that the complainant had omitted to Timber on crown land.

prove that the chena was crown property. The Magistrate, however, found the defendants guilty, and fined them in the sum of Rs. 50 each. *In appeal*, by the 3rd defendant, the judgment was affirmed; and per CURIAM.—"The burden of proof is thrown on the defendant, as to the land being or not being crown property. See Ordinance No. 24 of 1848, section 12. There was legal evidence that the appellant took part in the removal of the tree."

June 6.

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

Jurisdiction. *P. C. Colombo*, 1587. This was a charge against the defendant, for not maintaining his illegitimate child. The complainant was clearly proved to be a resident of Wattepittewelle, a place out of the jurisdiction of the Colombo Police Court. According to her own account, she "went to live at Pettiagodde in order to bring this case in the Colombo Court;" but there was evidence to show that she had always been seen in her village after each postponement. The defendant was a resident of Hacgalle. It was evident, therefore, in the absence of any evidence that the child was ever at Pettiagodde, that the desertion, if any, took place at Wattepittewelle, within the jurisdiction of the Pasyala Court. The Magistrate, however, found the defendant guilty, but expressed his doubts as to his jurisdiction. *In appeal*, the judgment was set aside.

June 12.

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

Contempt. *P. C. Matara, A.* In this case the defendant had been found guilty of contempt, and sentenced to fourteen days' imprisonment, for having addressed the following letter to the Magistrate:

"Tangalla, 15th March, 1872, 5 p. M.

"SIR, - I herewith give you notice that I'll sue you for 230 Rupees for damage sustained by me in consequence of your having assaulted and falsely imprisoned and caused to be so on the 13th ultimo for the space of 15 minutes. I further beg leave to suggest for an amicable settlement on payment of above amount within 48 hours from date and time hereof, in default of so doing I'll take legal steps to recover same.

I beg leave to remain Sir, your obdt. servant,

(Signed in Singhalese.)"

In appeal, the judgment was set aside; and per CURIAM.—"In this case the appellant, who seems to be a foolish and ignorant man, sent the Police Magistrate, by post, a letter which is in the nature of a notice of action. We do not think that the Police Magistrate was warranted in dealing with it as a contempt of Court."

P. C. Matale, 690. The defendants had been convicted of gambling, in breach of section 4, clause 4 of Ordinance 4 of 1841. The offence, as disclosed by the complainant's evidence, was that the 1st and 2nd defendants were playing a game of "breaking cocoanuts and betting rupees," and that the others were sitting in a ring playing at a game called "Zyplese," and betting on the game. *In appeal*, the judgment was set aside and case remanded for further hearing, "in order that evidence may be taken, as to the kind and nature of the games that were being played, to see whether they fall within the Ordinance." Gambling

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P. C. Kalutara, 47275. Held that the full toll of six pence was leviable on a relieving horse passing a toll bar unharnessed to any vehicle, and that such animal did not come within the description of "every additional horse used in drawing such vehicle and attached thereto," contained in the schedule appended to clause 4 of Ordinance 14 of 1867. Toll Ordinance.

June 26.

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

P. C. Mullaittivu, 7851. Where, under an agreement, the defendant was to be compensated for his labor by a share in the proceeds of a certain fishery, and it was specially stipulated that for any negligence on his part "the proprietor might bring an action in the Court," it was held that no criminal prosecution could be maintained against him under the penal provisions of Ordinance 11 of 1865. Labor Ordinance.

P. C. Kandy, 90534. Where, in a prosecution for crimping, under the 19th clause of Ordinance 11 of 1865, the offence disclosed on the evidence was that of forcible abduction and rape, the Supreme Court held that the Labor Ordinance did not apply. Labor Ordinance

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July 3.

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

P. C. Nuwarakalawiya, 7534. The judgment of the Magistrate on a question of fact was affirmed; and per CREASY, C. J.—"The Police Magistrate's letter shows that the assertions in the petition of appeal are false which complain of the defendant's having not been allowed sufficient time and opportunity for defence. Let the petition-drawer be informed that, if he draws up any more such false and scandalous documents for presentation to the Supreme Court, he will make himself liable to be punished by that Court for contempt." Petition Drawers.

P. C. Balapitimodara, 43072. Held that "giving false evidence as a witness" did not come within clause 166 of the Administration of False information

Justice Ordinance, but that "giving false information, whether by affidavit or not, whereon to found a charge", did come within the clause; also, that to try two defendants together on one plaint, but for distinct charges, was "a very irregular and inconvenient proceeding."

Maintenance. *P. C. Galle*, 72263. The defendant in this maintenance case (which is fully reported in page 5,) was acquitted at the fourth trial in the Police Court. *In appeal*, the judgment was affirmed; and per CREASY, C. J.—"The complainant was bound to make out a case of adulterine bastardy and has entirely failed to do so. The Police Magistrate's judgment on fact is conclusive, but, as there has been so much litigation between these parties, it may be useful for the Supreme Court to state that we fully agree with the Police Magistrate in believing the child to be Adrian's child and not the defendant's child."

Jurisdiction. *P. C. Galle*, 80405. This was an appeal, against a conviction for assault, on the ground of jurisdiction. The finding of the Magistrate, however, was affirmed; and per CREASY, C. J.—"A defendant who wishes to object to the jurisdiction of a Police Magistrate, on account of the aggravated character of an assault, should make the objection in that Court, and before the Police Magistrate has given his decision as to guilty or not guilty. In very extreme cases, and where the defendants had no professional adviser when before the Police Magistrate, the Supreme Court may allow and may even itself take and maintain the objection arising out of the aggravated character of the assault. But this is not a case of this kind."

Evidence. *P. C. Kegalla*, 34279. Held that, under clause 7 of Ordinance 6 of 1868, unregistered sannases were not inadmissible in *criminal* proceedings, even though the criminal judge should be incidentally obliged to enquire into title.

Defective plaint. *P. C. Matale*, 845. The charge was laid in the following plaint: "that the defendant did, on the 10th of April last and during several days previously, grossly misconduct himself, whilst in the employ of the defendant, in breach of the 11th clause of Ordinance 11 of 1865." The defendant having been found guilty, an objection was taken, *in appeal*, that the plaint had been too vague to allow of a proper defence being prepared. The Magistrate's judgment, however, was affirmed; and per CURIAM.—"The objection as to the vagueness with which the charge is laid in the plaint (if the objection be a good one) should have been taken before conviction."

July 9.

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

Nuisance. (Newman's case.)

P. C. Colombo, 2120. The plaint in this case was as follows: "that the defendant did, on the 24th January, 1872, at the Fort, Colombo, suffer a large quantity of sour and offensive beer to be emptied into a drain leading into the Fort Canal, whereby the water in the said Canal was fouled in a manner prejudicial to public health." The Magistrate found the charge proved, but held that the fact pleaded in defence—that the accused was ignorant that the drain in question emptied itself into the Canal,—might go in mitigation of the sentence The defendant was accordingly fined only 50 cents. *In appeal*, the judgment was affirmed; and per CURIAM.—"The Supreme Court thinks this conviction right. It is difficult to suppose that the defendant did not know that his drain communicated with the Canal; and even if such ignorance existed, it must have been the result of such *crassa negligentia*, in not ascertaining the course of the drain before he poured the offensive matter into it, as would make the defendant legally liable for the consequence. With respect to the supposed necessity of a *mens rea*, we refer to our decision in P. C. Panwilla, 13999,* where we pointed out that, in prosecutions for nuisances, it is no defence to shew that the accused had no design to break the law."

July 23.

Present TEMPLE, J.

Maintenance.

P. C. Galle, 76783. Held that a husband, although legally divorced from his wife, was bound to maintain his children by her.

July 30.

Present TEMPLE, J.

Division Officer.

P. C. Panadure, 19806, Where a Division Officer had been convicted under section 3, clause 46 of the Thoroughfares Ordinance of 1861, without a Queen's Advocate's certificate authorising the trial, the proceedings, *in appeal*, were quashed.

Security to keep the peace.

P. C. Kalutara, 46237. An order of the Magistrate, requiring security to keep the peace, was set aside in the following terms: "the defendants having been acquitted, no sufficient reason appears for binding them over to keep the peace."

August 6.

Present TEMPLE, J.

Security to keep the peace.

J. P. Kalpitiya, 490. This was an appeal against an order of the Justice of the Peace, binding over two defendants, under a charge of

* Vide Civil Minutes, 3rd October, 1871.

riot and assault, to keep the peace for twelve months. It was argued for the appellants that the evidence showed that the complainants and the accused were equally to blame, and that the Justice had no right to demand security only from the defendants, contrary to the direction of the Deputy Queen's Advocate (to whom the proceedings had been duly referred,) that both the parties to the case should be bound over. For the respondents, it was contended that appeals of this kind were restricted, by the 229th clause of Ordinance 11 of 1868, to orders "requiring" or "refusing" security, and were made subject to the rules and regulations relating to appeals from Police Courts. It was for the Supreme Court, therefore, to say whether the present order should stand or fall by itself, totally irrespective of the complainants, and whether the finding of the Justice on a matter of fact could be legally interfered with. Sed per TEMPLE, J.—"It is considered and adjudged that the order of the Justice of the Peace be amended, by the Justice of the Peace being directed to bind over both parties to keep the peace."

Autre fois acquit.

P. C. Avisawella, 15853. Held that the plea of autre fois acquit was not available where the previous proceedings had been quashed, the quashing of an indictment having the same effect as if the case had been abandoned.

August 16.

Present TEMPLE, J.

Wrong Dismissal.

P. C. Panadure, 19448. Where, without sufficient evidence to show that the charge was not one of theft, the parties had been prematurely referred to a civil action, the Supreme Court set aside a verdict of acquittal and sent the case back for further hearing.

August 20.

Present TEMPLE, J.

Nuisance.

P. C. Batticaloa, 5087. The plaint was to the following effect: (1) "that the defendant did, on the 29th of June and three following days, store in the premises of the Customs at Puliyantivoe, being in the neighbourhood of private habitations, without the permit of the Chairman of the Board of Health of the Eastern Province, offensive matter, to wit salt fish, in breach of clause 17 of the Bye-laws of the Board of Health; (2) that the defendant did, for 24 hours after receiving a written notice, from the Chairman of the said Board of Health, calling upon him to remove the said offensive matter, to wit, the salt fish stored as aforesaid, neglect to remove the same, in breach of clause 8 of Ordinance No. 15 of 1862." A verdict of guilty was found by the Magistrate, on both counts, and the defendant sentenced to pay a fine of Rs. 30. *In appeal* it was urged that the words "other

offensive matters" occurring in the bye-law, should be controlled by the specific words which preceded them, viz. "manures," and "bones," and that the salt fish in question which, according to the medical evidence for the prosecution, "was not rotten and was not unfit for food," did not fall within matters *ejusdem generis*. (The Wanstead Local Board of Health v. Hill, 41 L. J. (M. C.) 135.) Sed per TEMPLE, J.—Affirmed.

P. C. Colombo, 2874. Held that the fact of a defendant being reported not to be found was no reason for dismissing a case. Wrong Dismissal.

P. C. Galle, 81955. Where a Magistrate had fined a defendant, under the 18th clause of Ordinance 17 of 1867, the Supreme Court, *in appeal*, altered the sentence to one of imprisonment for fourteen days, the Ordinance not allowing the imposition of a fine. Illegal Sentence.

August 27.

Present TEMPLE, J.

P. C. Galle, 81566. In a prosecution under the 118th clause of Ordinance 17 of 1869, it was held that proof of payment of Customs duties, in respect of the goods seized, rested with the defendant, and that the complainant was not bound to lead evidence as to non-payment. Customs Duties.

P. C. Colombo, 2582. The defendant was charged with not having maintained his wife and child. The following entry was made by the Magistrate on the day of trial: "the defendant states he is ready to support his wife and child. Complainant states she cannot live with him. Defendant is fined Rs. 10. He is ordered to make monthly payments into Court,—in default one month's hard labour in jail." *In appeal*, the order was set aside and case sent back for hearing; and per TEMPLE, J.—"The complainant must give evidence of her inability to live with her husband. The Ordinance 4 of 1841 does not empower the Police Court to award future maintenance." Maintenance.

P. C. Panadure, 19804. Where a Magistrate had convicted a defendant under the 11th clause of Ordinance 7 of 1848, in the absence of proof that the vehicle in question was a hired one, the Supreme Court set aside the judgment and quashed the proceedings. Carriage Ordinance.

September 4.

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

P. C. Kandy, 90663. In a prosecution under the 4th clause of Ordinance 24 of 1848, the Magistrate acquitted the defendants on the ground that he was not convinced that the land in question was crown property. *In appeal*, the judgment was set aside and case sent Timber Ordinance.

back for further hearing; and per CURIAM.—"Ordinance 24 of 1848, section 12, makes it necessary for the defendants to prove that the land is not crown land. This certainly has not been done in the present case. If the burden of proof lay on the Crown, we should not interfere with the Police Magistrate's decision as to the insufficiency of the evidence for the Crown; but, by the Ordinance, the defendants cannot succeed unless they prove positively, either by cross-examination or by fresh evidence, that the land is other than crown land."

September 5.

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

Obstructing a thoroughfare.

P. C. Panadure, 19164. The defendants had been charged with having obstructed a public thoroughfare, in breach of the 94th clause of Ordinance 10 of 1861. The Magistrate having acquitted them, without assigning sufficient grounds for his judgment, the case had been sent back on the following order made by the Chief Justice:—"Request the Police Magistrate to state the reasons for his judgment. It does not appear at present whether he thinks that in point of fact there has been no obstruction, or whether he thinks this not to be a thoroughfare within the meaning of the Ordinance. The evidence for the prosecution on both points seems to be very full and conclusive." The Magistrate's reply having this day been read, the judgment of the Supreme Court was recorded as follows.—"The letter of the Police Magistrate shews that he finds, as a point of fact, the path to be a private path and not a public one. We cannot review his decision on facts. If it is really important to have the long continued dispute as to the path authoritatively settled, it would be best to take proceedings in the District Court. Our affirmation of this case would be no bar to such proceedings."

September 11.

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

Toll.

P. C. Kegalla, 4692. Held that when the Governor, by proclamation, appointed a particular place at which toll was to be taken, the toll-keeper had no right to take toll at another place. "When he does so, he comes under the 15th clause of the Toll Ordinance of 1867, by taking toll in a case in which toll is not payable under the provisions of the Ordinance."

Maintenance.

P. C. Galle, 81719. Held that it was competent for the complainant, in a maintenance case, to prove that the amount offered by defendant was insufficient for the maintenance of her two children and that he was liable to pay a larger sum.

September 18.

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

Gambling.

P. C. Matale, 987. Where the evidence shewed that the defend-

one of them, and there was no proof that the place was kept or used for the purpose of common or promiscuous gaming, or that it was such a public place as contemplated in the 4th section, 4th clause of Ordinance 4 of 1841, it was held that the defendants could not be convicted.

September 27.

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

Wrong sentence.

P. C. Trincomalie, 23377. Where the defendant had been sentenced to pay a fine of Rs. 50 and, in default, to be imprisoned for a certain period, the Supreme Court amended the order by striking off the alternative of imprisonment. "If the accused does not pay the fine, imprisonment will follow as provided for by Ordinance 6 of 1855."

Fiscal's Ordinance.

P. C. Galagedara, 18005. The defendants were convicted, under clause 23 of Ordinance 4 of 1867, of having resisted the complainant in the discharge of his duty as a Fiscal's officer, while engaged in watching a granary under sequestration. *In appeal*, the conviction and proceedings were quashed; and per CURIAM.—"The Police Court had no jurisdiction to try the charge without the election of the Queen's Advocate. See 119th section of Ordinance 11 of 1868. Besides, the writ of sequestration should have been produced."

Sentence altered.

P. C. Panadure, 19965. Where no discretion as to the amount of fine was allowed by Ordinance, the Supreme Court would alter the Magistrate's sentence and award the full penalty prescribed by law.

Malicious injury.

P. C. Jaffna, 912. Held, in a prosecution under the Malicious Injuries Ordinance, that the defendant was not to be convicted if it appeared that he did the act complained of under a bona fide, though possibly mistaken, claim of right to do it, and that the whole matter in such a case should be determined by a civil tribunal.

Refusing process.

P. C. Colombo.—Held that the fact of there being a counter charge against the complainant was no ground for refusing process, though it might afford good reason for hearing both the cases on the same day.

October 2.

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

Searching without a warrant.

P. C. Colombo, 3417. The plaint charged the defendant (a Police Serjeant) with having, on the 26th July, 1872, at Maharagama, knowingly and wilfully and with evil intent, exceeded his powers as a Police officer, by entering complainant's house and searching it without a search warrant, in breach of clause 70 of Ordinance 16 of 1865. On the case for the prosecution being closed, the defendant

called, as his only witness, the party at whose instance he had made the search, and who deposed as follows: "on the 26th July last my maid servant ran away with two strings of gold necklace and a gold ring belonging to me. I enquired at the Slave Island station. I went to defendant and I complained to him. We went to complainant's house and had it searched. The woman was not there. I saw her comboy there,—the same that she wore at our house. Defendant asked me for a warrant. I said I could not get one." The Magistrate's judgment was to the following effect.—"It is quite clear that defendant acted bona fide in this case. I consider he acted quite right in proceeding as he did under the circumstances. Besides, he was justified under clause 7 of Ordinance 4 of 1841. He is accordingly acquitted." *In appeal*, the finding was affirmed.

Dismissal.

P. C. Colombo, 3615. The defendant had been charged with disorderly conduct, but on the returnable day of the summons, the complainant being absent, the case was struck off. *In appeal*, it was urged that the complainant had been prevented from attending in consequence of the recent floods having interrupted railway communication with Colombo, and that this fact had been duly represented by petition to the Magistrate. The order, however, was affirmed.

Notoriously bad livelihood.

J. P. Jaffna. 10773. The defendants (five in number) were charged, on an affidavit by the Inspector of Police, with being by repute of notoriously bad livelihood. The complainant, who had been not more than six or seven months at Jaffna, deposed that he knew the accused by repute, as "violent men" and "robbers," and that frequent complaints had been made against them, although he could not say by whom. He called only one witness, the District Court Mudaliyar, who stated:—"I know 3rd, 4th and 5th accused, the 3rd and 4th are by repute bad men. The 3rd accused was concerned in a disturbance at a comedy once, according to my information. From what I heard, the 3rd and 4th accused are men of bad livelihood, who fight and disturb their neighbours. I know nothing about the 1st and 2nd accused. I heard that 2nd accused is a man of bad character. I know nothing about him personally. The 2nd accused was convicted of assault by Mr. Campbell. I heard that 4th accused was concerned in robberies. I know nothing against the 5th. I know nothing personally. I only talk of repute." The Justice having required security from all the accused for their good behaviour for six months, they appealed to the Supreme Court. And per CURIAM.—"Affirmed as to the 3rd and 4th appellants, but set aside as regards the 1st, 2nd and 5th appellants, against whom there is not sufficient evidence to bring them within the operation of the 233rd section of Ordinance No. 11 of 1868."

Malicious injury.

P. C. Galagedara, 18123. A conviction in a case brought under the Malicious Injuries Ordinance was set aside, in appeal, and a further

hearing ordered in the following terms. "From the evidence of one of the witnesses of the complainant, it would appear that there is a dispute about the boundary. To justify the conviction of the defendants, the Magistrates should be satisfied beyond reasonable doubt that the act complained of was malicious, within the meaning of Ordinance 6 of 1846, section 17. If the fence was cut bona-fide, under an honest though it may be a mistaken claim of right, the defendants will not be liable. Enquiry should be made regarding the civil case in the Court of Requests referred to in the petition of appeal."

Plaint.

P. C. Galle, 81464. Held that where a plaint was technically incorrect but the defendant had not been prejudiced in any substantial way, the Supreme Court would not interfere with the Magistrate's finding of guilty.

Division Officer.

P. C. Panadure, 19937. The defendant was charged with a breach of the 3rd section of the 46th clause of Ordinance 10 of 1861, in having fraudulently, and in the execution of his office as a Division Officer, forwarded, on the 4th day of July 1872, to the District Committee, the name of the complainant as a defaulter, in respect of the commutation rate due for 1870, whereas the defendant had received such rate from the complainant on the 10th of April, 1871. The evidence disclosed that the defendant, who was a Division Officer of one of the divisions of Panadure, furnished the Kalutara District Road Committee, in June 1870, with his first list of commutation defaulters, including the name of complainant. Warrants issued through the Police Court, and the complainant was obliged to pay the road tax to defendant in April 1871; but notwithstanding such payment, the complainant's name was again inserted in the final list, supplied in June 1871, to the Committee, and, consequently, in the final warrants, under which complainant was arrested and had to pay the tax a second time to the Deputy Fiscal. The Magistrate (who had the Queen's Advocate's authority to try the case) held as follows. "By defendant's act of omission, complainant was illegally arrested and had to make a payment to the Deputy Fiscal, in default of which he would have been forthwith imprisoned. Whether defendant entered complainant's name as a defaulter, in the list furnished in June, 1871, designedly or no, the Court is not in a position to say, but it has no difficulty in finding that defendant has, in his capacity of Division Officer, been guilty of a criminal neglect of duty removed but few degrees from fraud. The defendant is found guilty and sentenced to pay a fine of Rs. 25." *In appeal*, the finding was set aside and a judgment of acquittal entered and per CURIAM.—"The Police Magistrate has very properly held that the officer's misconduct did not amount to fraud. It follows that the officer could not be legally

October 9.

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

Witnesses.

P. C. Tangalla, 34349. The defendant, who was a Toll-keeper, was charged with having levied excessive toll, in breach of clause 15 of Ordinance No. 14 of 1867. Two witnesses were called for the defence, but the Magistrate refused to receive their evidence, as they "had not been out of Court," and fined the defendant in the sum of Rs. 50. *In appeal*, the judgment was set aside and the case remanded for further hearing; and per CREASY, C. J.—"The Police Magistrate should have heard the evidence of the witness called by the accused. No order was made for the witness to withdraw, and even after such an order (though the question was not without some doubt before)—if the witness remains in Court, it seems to be now settled that the judge has no right to reject the witness on this ground, however much his wilful disobedience of the order may lessen the value of his evidence. See Chadler v. Home, 2 M. & R. 423. Cobbett v Hudson, 22 L. J. (Q.B.) 13."

Assault.

P. C. Panadure, 20007. A Peace Officer and another were charged with assault. It appeared that the complainant was taken up on a warrant which had been directed to the Police Serjeant at Morottoo tor execution, and that he was hand-cuffed and beaten. The Magistrate, however, found the defendants not guilty. *In appeal*, the judgment was set aside and case remanded for further hearing; and per CURIAM.—"The assault being proved, the onus was on the defendants to establish that they were justified in arresting the complainant and that they used no more violence than was necessary. The first defendant should show how he came to act, and under whose directions he executed the warrant. It will be open to him at the further hearing to call the Police Serjeant to whom the warrant was addressed. See 9th clause of General Rules for Police Courts."

October 16.

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

Contempt.

P. C. Colombo, 3885. The Magistrate acquitted the defendants, who were charged with theft, after hearing only the evidence of the complainant, whom he immediately fined Rs 10 for bringing a false case. *In appeal*, the finding as to the contempt was set aside, the defendant not having been called upon to shew cause and allowed an opportunity to defend himself before being convicted.

October 29.

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

Judgment under a

P. C. Panadure, 19964. The Magistrate, in giving the judgment appealed from, having apparently been under the impression (which

the dates on the records showed to be incorrect) that the alleged assault, of which the appellant was found guilty, had been committed subsequent to the acquittal of the respondent in another Police Court case between the same parties, the Supreme Court set aside the sentence and remanded the case for further hearing and consideration and judgment de novo.

November 5.

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

P. C. Colombo, 3901. The plaint charged the defendant with having "on the night of the 14th September, at Colpetty, allowed his dog to bark and howl during the night, and thereby disturb the repose of the public." The Magistrate held that he considered defendant responsible "for the nuisance and disturbance caused nightly by his dog," and fined him in the sum of Rs. 10. *In appeal*, the judgment was set aside and the case remanded for further hearing; and per CREASY, C. J.—"This is a charge of public nuisance. The plaint alleges that the howling of the defendant's dog disturbed the repose of the public, but the proof adduced establishes that the inmates of one house only were disturbed, and consequently is insufficient to support the conviction. To constitute the offence of a public nuisance, or what is the same thing an indictable nuisance, as distinguishable from a private nuisance for which no criminal proceedings lie except under special ordinance, it is necessary that the nuisance should be such as to annoy the neighbouring community generally, and not merely some particular person. So it has been determined that the existence of a public nuisance depends upon the number of persons annoyed, and is a matter of fact to be judged by the jury. R. v. White, 1 Burr. 337. See also R. v. Lloyd, 4 Esp. 200, which was a case where a tinman was indicted for the noise made by him in carrying on his trade, and it appeared that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn. Lord Ellenborough ruled that the indictment could not be sustained, as the annoyance, if anything, was a private nuisance. The complainant had better before the further hearing be allowed to amend his plaint, by adding that the defendant *kept* the dog, and that the animal barked, howled, and made great noises, to the great discomfort and annoyance of the public in the neighbourhood and the deprivation of their natural rest and sleep during the night. It would also be well that a count should be added for breach of Ordinance No. 15 of 1862, sec. 1, clause 4, charging the defendant with keeping the dog (setting out the barking, &c.) so as to be a nuisance to the person or persons (naming him or them) who may be aggrieved. Under this clause, proof of a nuisance to one family or person is enough, but it ought to be proved to be a grievous nuisance, and to be a permanent or a very frequently recurring nuisance. It has often been said by the Bench

Nuisance. (Dogs.)

in England, as to complaints of this kind, that people must both bear and forbear. A man has a right to keep a fierce dog for the protection of his property (see Sarch v. Blackburn, M. & M. 505;) and in a town so infested by burglars as Colombo is, it would be very hard to deprive him of that protection because the neighbours were sometimes woke up by the house dogs barking or even howling, A man may keep dogs as he may keep cats or parrots or other creatures, merely because he likes to do so, and he is not to be punished for it, merely because an occasional growl, squeal or yell breaks in upon the tranquillity of the district. But if he gratifies his fancies so as to cause serious and permanent annoyance to his neighbours' substantial comforts, and not merely to their whims and tastes, the law can and will interfere to stop him. If it can be proved that he keeps the objectionable animal for the express purpose of vexing his neighbour, proof of even moderate actual annoyance would be enough. No arbitrary rule can be laid down. A precedent may be found in Chitty's forms of criminal proceedings, vol. 3, p. 647, under which parties have been indicted for keeping dogs to their neighbour's annoyance. On the other hand, there is the case of Street v Tugwell, Selwyn's N. P., 1070, where in an action on the case against the defendant, for keeping dogs so near plaintiff's dwelling house that he was disturbed in the enjoyment thereof, it appeared in evidence that defendant kept six or seven pointers so near plaintiff's dwelling house that his family were prevented from sleeping during the night, and were very much disturbed in the day time. No evidence was given on the part of the defendant, notwithstanding which the jury found for the defendant. On a motion for a new trial, Lord Kenyon, C. J. said, "I know it is very disagreeable to have such neighbours, but we cannot grant a new trial. Cases certainly of this nature have been made the subject of investigation in Courts of Justice, &c., &c. If the defendant continues the nuisance, and you think it advisable, you may bring a new action. Rule refused." It is remarked in Roscoe, N. P., page 655, with respect to this ruling, that the Court would no doubt have upheld a verdict the other way, if the Jury had found it to be a nuisance. Every case must be considered with reference to its own circumstances, and by the light of common sense and of common fairness in respect of the interests of both parties. Accordingly, it will be for the Magistrate, having regard to the points above indicated, to determine whether the defendant is or is not liable to conviction."

Illegal sentence.

P. C. Panwilla, 14,076. The defendant, who had been complainant's servant and who had given due notice to quit, was charged with having stolen certain articles on the day he left his master's house. The Magistrate found him guilty and delivered the following judgment: "defendant is sentenced to three months' imprisonment at hard labor and to a fine of £4; in default of payment to go to prison for ten additional weeks at hard labor. The property must be returned to com-

plainant. The wages due to accused will be forfeited." *In appeal*, so much of the judgment as directed that, in default of payment of the fine, the defendant should be imprisoned for ten weeks, and that he should forfeit the wages due to him, was set aside; and per CURIAM.—"If the fine be not paid, the Court should proceed in the manner directed by the Ordinance No. 6 of 1855. It must be taken that the fine ought to have been paid forthwith, no time being specified when the sentence was passed. The accused, not having been prosecuted for a breach of the 11th clause of Ordinance No. 11 of 1865, could not be punished thereunder."

November 12.

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

Police Ordinance.

P. C. Galle, 82267. The defendants who were Policemen, were charged with abuse of power, under the 70th clause of Ordinance 16 of 1865. The Magistrate having convicted them, awarded a sentence which was undoubtedly within his jurisdiction. *In appeal*, it was urged that the Magistrate had no right, in view of the requirements of the 98th clause, to try the case without a certificate from the Queen's Advocate, as the penalty prescribed for the offence included a fine not exceeding three months' pay, which might be £5 or over £50. Per CURIAM.—"Affirmed, but it would be more proper in such cases to take evidence as to the amount of wages."

Malicious injury.

P. C. Kegalla, 34940. The defendants were charged with having wilfully, unlawfully and maliciously cut down and rooted up 45 plantain trees, 15 cocoanut plants and about 300 coffee plants, and destroyed the fence, on complainant's land. The Magistrate, after hearing evidence on both sides, held as follows. "It is clear that the dispute is about a piece of ground which had not been cultivated for years, and which is situate between the lands of complainant and first defendant's wife. The complainant planted it, and defendants rooted up the trees he had planted. This they had no right to do. The evidence on both sides shews the complainant did plant the land. The last witness alone said there was no planting, no quarrel; and I do not believe him in that or any other portion of his evidence. I don't believe there was anything like the number of trees that complainant would have us believe. First and second defendants are fined ten rupees each, and third defendant, a young boy, five rupees." *In appeal*, the judgment was set aside in the following terms. "It is clear that the defendants acted under a bona-fide claim of right, and where that is the case the Malicious Injuries Ordinance does not apply, even though the claim may turn out to be a mistaken one."

Fiscal's Ordinance.

P. C. Kalutara, 48013. The charge was that the defendants had, on the 2nd of September, resisted and obstructed the complainant

(a Fiscal's officer,) while he was placing a third party in possession of a certain land under an order of the District Court of Kalutara. The Magistrate held as follows: "The 64th clause of the Ordinance, under which these defendants are charged, requires that if, in the execution of a decree for land, the Fiscal' officer shall be resisted by the defendant, the person in whose favor such decree was made, or the Fiscal, may apply to the Court to enquire into the matter; that thereupon the Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same. In this case no application was made to the Court, and therefore the preliminary enquiry contemplated by the Ordinance was not made. I think, therefore, that the present proceedings are irregular, and that the defendants should be acquitted. They are charged under a penal clause, and it must be strictly construed. The defendants are acquitted and discharged." *In appeal*, the judgment was affirmed; and per CURIAM.—" The appellant wished the Police Magistrate to convict the defendants, under the 64th clause of the Fiscal's Ordinance, 1867, and the Police Magistrate very properly held that he had no power to do so. If there had been any actual violence or assault by the defendants, the Supreme Court might have sanctioned a further hearing on an amended plaint, but the appellant's own evidence shews that nothing of the kind occurred."

November 19.

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

Riotous and forcible entry.

J. P. Panadure, 5218. The defendant (with several others) had been charged with having riotously and forcibly entered a certain land which he claimed equally with the complainant, and with having rooted up several cocoanut plants therein. The Justice, under the direction of the Queen's Advocate, discharged all the accused, save the appellant who was ordered to find security to keep the peace for three months. *In appeal*, the order was affirmed; and per CURIAM.— " The affidavit of the complainant gave the Justice of the Peace jurisdiction under the 221st section of Ordinance 11 of 1868. The violence on the part of the appellant, which has been proved, fully justified the order."

Forcible entry.

P. C. Galagedara, 18243 A conviction under the Proclamation of 5th August, 1819, was affirmed, *in appeal*, in the following terms: " There is evidence enough to establish that violence was threatened and that there was a tumult and a breach of the peace. The question of title is immaterial. The defendants are punished not for having entered land to which they had no title, but for having entered it forcibly and in breach of the peace."

Malicious injury.

P. C. Colombo, 4447. The plaint stated " that the defendant did on the 27th November, at Modera, wilfully and maliciously break and injure a carriage, in breach of the 18th clause of Ordinance No. 6 of

1846." The carriage appeared to have been left on the public road, and the defendant was charged with having removed some stones which supported it on a declivity, whereby it rolled into a cabook pit and was much damaged. The Magistrate stopped the case for the prosecution, after hearing the evidence of only one amongst several witnesses who were in attendance, and referred the complainant to a civil action. *In appeal*, the order was affirmed, the Chief Justice remarking that it was competent for the defendant to remove an obstruction on a public thoroughfare, such as the carriage undoubtedly was, and that it would be an improper straining of the Ordinance to bring him within its operation.

P. C. Colombo,——. Held that no case could be reinstituted in the Police Court without the special leave of the Magistrate. See Ordinance 18 of 1871, section 5. Reinstituting a case.

November 20.

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

P. C. Galle, 83088. The plaint alleged "that the defendants did, on the 12th November, outside the Main-gate, wilfully and negligently, lead a certain wheeled carriage, to wit a hand-cart, on the wrong side of the road, in breach of the 85th clause of Ordinance 16 of 1865. The defendants were found guilty and sentenced each to pay a fine of fifty cents. *In appeal*, the judgment was affirmed; and per CURIAM:—"We had at first some doubt whether this case comes within the 85th section of Ordinance No. 16 of 1865, but on consideration we are all of opinion that the words of the Ordinance are sufficient to embrace it, and it certainly is a case of mischievous nuisance such as the Ordinance was intended to repress." Negligently leading a cart.

November 26.

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

P. C. Panadure, 20109. The defendants were charged with disorderly conduct and with indecent exposure of their person, in breach of the 4th clause of Ordinance 4 of 1841. The charge was substantially proved, but the Magistrate held that the ends of justice would be satisfied with the defendants being bound over to keep the peace for three months, with collateral and personal security for Rs. 300 each. *In appeal*, the judgment was affirmed. Disorderly conduct.

P. C Ratnapura, 13289. The defendant, who was an overseer in the Public Works department, was charged with having wilfully and knowingly taken into his employ four coolies, who had absented themselves without leave from the service of the complainant, to whom they had bound themselves as monthly coolies, in breach of the 19th clause of Ordinance 11 of 1865. The accused, under warn- Labor Ordinance.

ing, stated—"The coolies first went and told the Arachchy that they were leaving complainant; they also told the Policeman at Balanggdde, and then came to Court and said so. After that I gave them employment." The names of the coolies appeared to have been entered in a check roll signed by Mr. Murray, the superintending officer; and it was urged by defendant's proctor that the complainant, who was himself a monthly servant, could not be regarded as their employer. The Magistrate held as follows: "Mr. Murray is not present to prove that the coolies were employed by him. I could wait for his evidence before deciding, but that I think the accused acted bona fide in the matter, and he is accordingly discharged." *In appeal*, the judgment was affirmed.

Maintenance

P. C. Batticaloa, 5384. This was a charge against defendant for not maintaining his illegitimate children, in breach of clause 3 of Ordinance 4 of 1841. The Magistrate, after hearing evidence on both sides, held the defendant guilty and fined him Rs. 10, but stated in his judgment—"the defendant's case has completely broken down, but even were it not so, the Court was prepared to have convicted him." *In appeal*, it was contended that the Magistrate had evidently prejudged the case, and that, therefore, the defendant was entitled to a new hearing. Sed per CURIAM.—Affirmed.

December 3.

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

Maintenance.

P. C. Galle, 81974. This was a charge against defendant for not maintaining his illegitimate child. The complainant was a Moorish woman, whose husband was alive but from whom, it was stated by her father, she had been separated five years ago "in presence of a Lebbe." The Lebbe was not called, nor was there any document recording the alleged separation produced. The Magistrate, however, held as follows. "There is proof of the cancellation of the marriage with Sego (the husband) and separation from him five years ago. Now the very appearance of the child is evidence enough that the child could not have been born during cohabitation, the child being but a few weeks old. The defendant is found guilty and fined Rs. 6, 4 to complainant." *In appeal*, the judgment was affirmed.

Nuisance.

P. C. Panadure, 20207. The charge was laid in the following plaint: "that the defendant did, on the 20th October, collect filth and dirt into a heap, opposite to his boutique on the drain of the high road at Pattia, and burn them, without removing the same as required by Ordinance, to the great nuisance of the complainant who oc-

cupies the adjoining boutique, in breach of the 94th clause of Ordinance 16 of 1865." The Magistrate found the defendant guilty and fined him Rs. 2. *In appeal*, the judgment was set aside ; and per CURIAM.—" The burning of rubbish is not an offence under the 94th clause of Ordinance 16 of 1865."

Timber Ordinance.

P. C. Nuwara Eliya, 8612. The defendants were charged with having cut 115 trees from a certain Crown forest at Sita Eliya, without a proper license, in breach of clause 5 of Ordinance 24 of 1848. The Magistrate gave judgment as follows: " This case is dismissed. There is nothing to shew that the defendants had anything to do with the felling of the timber. Let the timber be seized and sold." The defendants appealed to be allowed to remove the timber. Per CURIAM.—" Appeal dismissed. The order in question appears to be surplusage, but as the defendants have been acquitted, on the sole ground that they had nothing to do with the timber, they cannot be prejudiced by such order."

Assault.

P. C. Gampola, 23839. The defendants were charged with having assaulted, and with having incited others to assault, complainant. The 2nd defendant having gone to survey a land for the 1st, was opposed by complainant and his wife. An angry altercation ensued, and the complainant was very severely beaten and would probably have been further assaulted but for the coach, with the Magistrate as a passenger, passing the place at the time. The Magistrate having found the 1st and 2nd defendants guilty—the others being acquitted—proceeded to pass sentence as follows . " And whereas what I personally saw is not evidence, and cannot criminate defendants, but legally may and equitably should influence me in awarding penalty or sentence, I place on record, as further explaining cause of severe penalty, that I found 1st defendant white and trembling with passion, apparently directing a number of coolies who were dragging from a house on to the road, with brutal violence, the complainant, who was much injured and tied with rough cords which I removed from his legs and either his neck or shoulders. * * * 2nd defendant was a little way off, some five yards or so, and, when I saw him, watching the approach of the coach but making no effort to intercede. The 1st and 2nd defendants are severally sentenced to ten days' imprisonment." *In appeal*, it was urged that when the defendants had attended the Police Court on the 19th of November on a J. P. summons, a P. C. plaint for assault had been entered and the case tried on the same day without any further process ; that they were refused a postponement, although granted the indulgence of summoning their witnesses for the following day when evidence for the defence was received ; that these were irregularities which could not but have

prejudiced the defence ; and that the Magistrate was not justified in importing into the case his own evidence. The Supreme Court, however, affirmed the Magistrate's finding and sentence in the following terms : "The defendants had full opportunity to prepare their defence. The Magistrate decided the issue of guilty or not guilty on strictly legal evidence. He had a right, when apportioning the punishment, to avail himself of his own personal knowledge."

December 10.

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

Gambling. *P. C. Colombo*, 5109. The defendants were charged with having "gambled, by betting at a cock-pit in a public place, in breach of Ordinance 4 of 1841, clause 4th." The Magistrate found them guilty, and sentenced the 1st, 3rd and 4th to pay a fine of Rs. 10 each, and the 2nd to be imprisoned at hard labor for one month. To the judgment, however, was appended the following order,—"the game cocks produced to be forfeited and sold." *In appeal*, it was urged that Inspector Andree's evidence, as to the character of the 2nd accused, in connection with previous cases of gambling, had been improperly received before conviction, and that the forfeiture of the cocks was illegal. Per CURIAM.—"Affirmed. The Supreme Court has to point out that enquiry as to the bad character of the accused, or whether he is an old offender, should not be made until judgment of guilty has been pronounced. The order for the forfeiture and sale of the game cocks was beyond the power of the Magistrate, and must be regarded as surplusage, no such power being given by the Ordinance."

December 17.

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

Judgment of "not guilty." *P. C. Galle*, 82865. Where, under a charge for assault, the complainant had adduced sufficient evidence, if believed, to prove the offence, but the Magistrate's judgment on the record was merely "not guilty," the Supreme Court set aside the finding and remanded the case for further hearing ; and per CREASY, C. J.—"As the record now stands, there is evidence of an assault, and there is no statement by the Police Magistrate that he disbelieves that evidence. No justification is at present proved."

Costs. *P. C. Matara*, 71124. The defendant was charged with having unlawfully received a quantity of kitul fibre, knowing the same to have been stolen. After hearing complainant's evidence, the Magistrate gave judgment as follows: "Defendant is acquitted with costs." *In appeal*, per STEWART, J.—"Affirmed, save as to costs, which part of the judgment is set aside. The complainant may have been mistaken in supposing the fibre in question to be his, but there is nothing to shew that he did not bona fide believe that it belonged to him."

Eye-witnesses.

P. C. Panadure, 20182. The defendant was charged with having maliciously thrown stones into complainant's house and broken his furniture, in breach of the 19th clause of Ordinance 6 of 1846. An admission made by him to an Aratchy was duly deposed to by that officer at the trial, but the Magistrate declined to be bound by it in the absence of the evidence of certain alleged eye witnesses whom the complainant failed to call. *In appeal*, the judgment was set aside and case sent back for further hearing and consideration; and per CREASY, C. J.—"A the record stands, the defendant's admission was legal evidence; but, as it would be very more satisfactory to hear the evidence of the alleged eye-witnesses, the case is sent back for further hearing. It will be the duty of the complainant to call them."

Opportunity for defence.

P. C. Panwilla, 14151. This was a charge against certain canganies and coolies, for refusing to work and for behaving insolently to their employer, in breach of the 11th clause of Ordinance 11 of 1865. The defendants were convicted, but all of them, save the present two appellants, elected to go back to their estate *after sentence*, and were allowed to do so; the Magistrate taking upon himself to cancel his own judgment so far as it affected them. *In appeal*, it was urged (independently of the merits of the case which were not gone into by counsel,) that the appellants having been taken up on a warrant were brought into Court and tried on the same day, although a postponement had been specially applied for, to secure the attendance of a witness named, but had been refused; and that, in view of the heavy punishment which had been awarded, and the want of facilities generally for immigrants who were arrested on Coffee estates to secure prompt legal advice, the equities of the case demanded that an opportunity should be given to the defendants to call evidence. Per CURIAM.—"These appellants had a professional adviser acting for them; and strictly speaking when he claimed a postponement (which ought to have been claimed when the case was first called on,) he ought to have satisfied the Police Magistrate, by affidavit or other sufficient means, that there were witnesses in existence who could prove facts material to the defence in the present case, and that no reasonable means of securing the attendance of these witnesses in the first instance had been neglected. But we are always anxious to guard against the possibility of any man being convicted of a criminal offence without having had full means of making and proving his defence, if such means exist. We, therefore, send the case back for further hearing and consideration, so far as regards these appellants. And in so doing, we draw the Police Magistrate's attention to clause 4 of Ordinance 18 of 1871, which will authorize him, if he ultimately convict, to make the defendants pay the expenses of the complainant and the complainant's witnesses."

Municipal Magistrates.

B. M. Kandy, 5873. The defendant in this case, having been found guilty of a breach of clause 8, chapter 19 of the Bye-laws of the Municipal Council of Kandy, appealed on the ground that only two Magistrates had presided at the hearing of the case, and that, therefore, the judgment was void in view of the requirements of section 32 of Ordinance 17 of 1865. Per CURIAM.—"Quashed. The conviction shews that only two councillors were present at the hearing. By the 32nd section of the Ordinance No. 17 of 1865, three or more councillors are necessary to form a Bench of Magistrates."*

Security to keep the peace.

P. C. Colombo, 1649. The complainant having sworn an affidavit charging the defendants with constantly abusing and annoying him and threatening to do him bodily harm, the Magistrate, without hearing any evidence, made the following order: "both parties are bound over to keep the peace for six months in Rs. 100 each." *In appeal*, by the complainant, so much of the judgment as required him to give security was set aside; and per CURIAM.—"The case discloses nothing to require or justify such an order. So much of the order as binds over the other parties to keep the peace is affirmed."

December 23.

Present STEWART, J.

Gambling.

P. C. Panadure, 20085. The defendants were charged with gambling on a land called Galawattemoderawatte. In the course of the evidence, it transpired that the gambling had taken place in a ditch on the sea beach; and the Magistrate thereupon held that the offence came within the meaning of clause 4 of Ordinance 4 of 1841. *In appeal*, however, the judgment was set aside; and per STEWART, J.—"The plaint is defective, in that it is not alleged that the defendants were gaming in any street or other open or public place. According to the evidence, the gaming took place in a ditch; but whether it was an open one, and in an open or public place, it does not clearly appear."

Autre fois acquit.

P. C. Kegalla, 35127. The defendants, having been convicted of assault, appealed chiefly on the following grounds: (3) "the case is one which should properly come under the Village Communities Ordinance. Respondent cut down an old boundary dam between his field and that of the 1st appellant and brought the present case

* In *B. M. Colombo*, 4991, the defendant, who had pleaded guilty, under a charge of Nuisance, and been fined £2, appealed on the ground that the penalty had been imposed by a Bench consisting of only two Magistrates, and that the signature of the third Councillor appearing on the record had been obtained "long afterwards." This statement was duly supported by affidavit, but the Supreme Court *affirmed* the judgment.—Vide Civil Minutes, 20th July, 1869.

against appellants; (4) under the directions of the Assistant Government Agent a "Gansabahawe," presided over by the Rattamahatmeya, was held touching the matter, and a verdict returned in favor of the appellants; (5) appellants humbly prayed the Court below for a reference to the report in which the verdict is embodied, but the prayer was refused." The petition to the Magistrate, referred to in paragraph 5, was of record, with the mere endorsement by him —"file in case." Per STEWART, J.—"Affirmed. There is nothing to shew that the charge was enquired into and adjudicated upon by the Gansabahawe."

Cruelty to animals.

P. C. Urugalla, 4147. The plaint was as follows: "that the defendants did, on or about the 12th day of November, cruelly ill-treat, abuse or torture, or cause or procure to be cruelly ill-treated, abused or tortured, a bullock belonging to him, in breach of 1st clause of Ordinance 7 of 1862." On the evidence for the prosecution being closed, the defendant stated in defence—"the bullock is mine. The medical men gave orders that it should be branded, as it was sick. I can prove it is usual for animals to be so branded. Its sickness was cold fits." The Magistrate held as follows: "This animal was produced before the Court at the time, and the poor brute was in a horrible state from branding. Flourishes, rings and ornamentations of every kind were described all over its body, and the opinion of the Court is that the branding was excessive and unnecessarily severe in the meaning of the Ordinance. If the defendant is such a pig-headed idiot as to imagine that by treating a creature in such a way he can do its health good, he must be taught better sense by the punishment of a fine. Defendant is fined Rs. 10 and warned." *In appeal*, it was urged that defendant should be allowed an opportunity (which apparently had been denied him at the trial) to prove that he had acted bona fide and under medical advice as alleged. The judgment, however, was affirmed, STEWART, J. remarking that he would send the case back for further hearing, to enable the defendant to call his witnesses, if not that he was of opinion, in view of the nature of the branding deposed to, that the question of intention could not affect the verdict.
