1921

RAGHUBAR v. PIARI LAL.

The conviction, or as it really is, order, was impugned on the ground that the word " due " does not appear before the word notice; it is also absent from the complaint, but no objection was taken at the hearing and no prejudice could have been caused by its absence. I amend the order by inserting it.

I concur in the contention for appellant that the order should not have contained the infliction of any penalty for non-delivery. The procedure under this section is an unusual one and the steps to be taken might be much more clearly indicated. The order should have been simply for the delivery of the " goods " and on failure to deliver a further summons could have been issued calling on defendant to show cause why he neglected to deliver. On this, after hearing the parties, the Magistrate would be empowered to order payment of their value, and this order could be enforced under section 45 of Ordinance 4 of 1876.

I amend the order made by the Magistrate as above indicated and remit the case to the District Commissioner with the opinion above expressed.

I allow no costs.

1922.
Jan. 25.

[APPELLATE JURISDICTION.]

[ACTION NO. 1, 1922.]

MANOHAR *v.* LUCCHINELLI.

Guilty knowledge—obtaining money by means of a worthless cheque.

Held, fact that appellant had made a statement to the police denying any such transaction with the cheque as alleged by the prosecution was evidence which the Court could properly take into consideration in arriving at the conclusion that the appellant acted with a guilty mind and fraudulent intent. (Re Pinter, 17 Cox 497).

C. S. DAVSON, C.J. This is an appeal from a conviction for obtaining money by false pretences. The case for the prosecution was that appellant obtained money from a tailor, Natali, by means of a worthless cheque which he fraudulently represented as being good and valid, well knowing that it was not good and valid.

The grounds of appeal are, substantially, that the evidence does not support the conviction, that a certain statement said to have been made by appellant was wrongly admitted, and that the punishment was excessive. There is clear evidence

that appellant presented what purported to be a cheque for £10 signed by " Morris, Hedstrom," to Natali in his shop on Saturday, 19th November, that he said it was a cheque from Morris, Hedstrom and would be cashed, and that he obtained money for it. On the 21st this document was tendered for cash at the Bank of New South Wales, where Morris, Hedstrom Limited have an account, and the ledger-keeper there swore that it was obviously not drawn by Morris, Hedstrom Limited. No one from the company was called on this point, but I think the uncontradicted evidence of the bank's clerk is sufficient.

The Magistrate believed the evidence as to what took place in Natali's shop on the 19th, and I see no reason to interfere with his finding.

As to the statement, which is contained in the document C, I think it was properly admitted. Where a statement is written down to be signed by the person making it, it is preferable, if possible, to let that person sign the paper on which the statement is originally taken down. Here a fair copy was made from the original document, but the interpreter swore that he interpreted it to appellant, who said it was correct. The interpreter was cross-examined, but nothing was elicited to show that he had induced appellant by improper questions or otherwise to make the statement, or that it was otherwise than voluntary. This statement by appellant was a flat denial that he had visited Natali's shop or given him any cheque.

We have, then, these facts proved:—That appellant did obtain money on this worthless piece of paper which he assured Natali was a good cheque, and that two days later when questioned by the police, he denied all knowledge of the transaction. It is contended that even taking these facts as proved appellant should not have been called upon for a defence, but that the case should have been dismissed. It is true that there could be no conviction unless appellant knew that the cheque was worthless. If he had believed it good, if, for instance, he had received it in good faith in payment of a debt due to himself, he would have been not guilty. In such a case a man would take the first opportunity of saying how the cheque came into his possession, and I think his denial of any knowledge of the transaction which had undoubtedly taken place is evidence which would entitle a jury (or a Magistrate) to say that he passed off that alleged cheque with a guilty mind.

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MANOHAR v. LUCCHINELLI.

I am of opinion, therefore, that appellant was properly called on for his defence. He went into the witness box and swore that he had never presented the cheque to the tailor and gave evidence setting up an alibi, which was supported by two witnesses. It cannot, therefore, be said that his first denial (document C) was the result of nervousness or surprise on finding himself in the awe-inspiring presence of the Chief Inspector of Constabulary, he repeated the denial nearly three weeks later after ample time for reflection.

Appellant's counsel argued the case, as he was practically bound to do, from the standpoint that his client made the false pretence, i.e., that he presented the worthless cheque as a good one; but he contended that there was no evidence that he knew it was not a good cheque, in which case he would not be guilty of any offence. This is the crux of the whole case: was the man's denial of the transaction merely food for suspicion (no one I think would deny that it was that) or was it conduct from which the Court could conclude that he acted with a guilty mind and fraudulent intent. It seems to me incredible that if he had come by the so-called cheque in good faith he would not at the earliest opportunity or, failing that, at his trial, have explained his possession of it. I find therefore, that there was evidence to support the conviction. As to the sentence I do not think it is excessive.

The appeal is dismissed with costs.

1922.
April 20.

[APPELLATE JURISDICTION.]

[ACTION NO. 41, 1922.]

LESLIE DAVIDSON *v.* JOE A. RASHID.

Writ of Prohibition—nature of.

Held, cannot issue from Supreme Court to its own Commissioner.

Sir CHARLES DAVSON, C.J. It is of the essence of a writ of prohibition that it is issued by a superior to an inferior Court.

The Court of a District Commissioner sitting under the Summary Procedure Rules is not an inferior Court, but is part of the Supreme Court with a jurisdiction limited as to place and value. A writ of prohibition cannot therefore properly issue from the Supreme Court to an officer sitting as its own Commissioner (Ord. 7 of 1875, sec. 34).