Present: Mr. Justice Wood Renton.

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THE KING *v.* ARNOLIS.

D. C. (Crim.), Colombo, 1,982.

Penal Code. s. 180—Petition to the Governor—False information—Privilege—Bill of Rights—"Public servant."

A person who gives false information in a petition to the Governor is guilty of an offence under section 180 of the Penal Code, the Governor being a public servant within the meaning of section 19 of the Penal Code.

The applicability of the Bill of Rights to Ceylon discussed.

APPEAL from a conviction by the Acting District Judge of Colombo (H. A. Loos, Esq.), under section 180 of the Penal Code. The facts are fully stated in the judgment.

Tambiah, for the accused, appellant.

Walter Pereira, K.C., S.-G., for the Crown.

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In this case I have had the advantage of full and able arguments on behalf both of the appellant and of the Crown. If I thought that it would serve any useful purpose to reserve my judgment, I should, of course, have done so; but I have made up my mind clearly in regard to all the points which have been argued before me, and so I propose to deal with the case while the facts and the arguments are still fresh in my mind.

This is an appeal against a conviction under section 180 of the Penal Code; and the charge on which the appellant has been convicted is that on or about September 5, 1907, he gave false information in a petition to His Excellency the Governor that great pressure was put upon him by one Don Abraham Samaradiwakera, Police Headman of Bemmulla peruwa, to induce him to give false evidence incriminating the first accused in a case known as the Veyangoda murder case, and also that criminal force was used towards him by the headman in question while he was in police custody. As the learned District Judge has imposed only a sentence of three months' rigorous imprisonment, there is no right of appeal on the facts (section 335 (*d*) Criminal Procedure Code), and in the course of the argument nothing has transpired to make me think it right to allow them to be reviewed in revision. Mr. Tambiah called my attention to the circumstance that there were two other counts in the indictment against his client, and that on those counts there has been an acquittal. It is true that the District Judge has

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given no reason in his judgment for his acquittal of the appellant on those two charges; but it is clear that he believed the evidence which was adduced in support of the first charge, and I do not think that I ought to infer that there was anything in the grounds of his decision in regard to the second and third charges that weakened the view that he took of the credibility of the evidence brought forward to establish the first. I shall, therefore, deal with the case solely on the issues of law that have been raised here to-day.

It was contended by Mr. Tambiah, in the first place, that, the alleged false information having been embodied in a petition to the Governor, it was absolutely privileged under the Bill of Rights (*1 Will. & Mary, Sess. II., c. 2*), and that consequently no prosecution in respect of it could be maintained. If it were necessary to decide them, various points of grave constitutional and legal interest would be involved in this contention. I confess that I entertain serious doubts as to whether the protection which the Bill of Rights confers on petitions to the Sovereign involves any absolute privilege within the meaning of the law. Clause 5 in the preliminary recital of the Declaration of Rights confers no such privilege in terms. It declares merely that " it is the right of the subject to petition the King, " and that " all commitments and prosecutions for such petitioning are illegal. " It might fairly be argued that, while this provision safeguards the right of petitioning, it does not confer an absolute immunity from either civil or criminal liability on the petitioner in respect of any matter which he may choose to incorporate in his petition. It stands in marked contrast to clause 9 in the same recital, which provides that " the freedom of speech and debate on proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament. " It has been held (see *Encyclo. Laws of Eng., 2nd ed., XI., p. 623*) that the privilege conferred by this latter clause is absolute; and we all know that it is treated as such in the recognized text books on Libel and Slander. I am not aware, however, that there are any decisions to the effect that the right of the subject to petition the King is free from all the restraints both of the civil and of the criminal Law. But, even if the privilege conferred on petitions to the Sovereign by the Bill of Rights were absolute, there would be a further question as to whether that privilege extends to ceded or conquered colonies, such as Ceylon (*cf.* on this point Forsyth's *Cases and Opinions on Constitutional Law, p. 454*). As the Solicitor-General has pointed out in his argument, there is clear authority for holding that in the case of such colonies the old law remains in force till it has been altered by some act in exercise of the Royal prerogative to replace it by a new one. Mr. Tambiah was unable to cite to me any authority showing that any absolute privilege attached to petitions to the Dutch Government, or the Dutch Governors of Ceylon prior to the English occupation of the Island; and it is not suggested that

there has been any subsequent legislation introducing the English Common or Statute Law on the subject. I would further point out that the really enacting clause in the Bill of Rights, viz., section 6, only declares the rights and liberties which are recited in the preamble to be " the true, ancient, and indubitable rights and liberties of the people of this kingdom. " But even assuming that the two difficulties to which I have referred could be overcome, Mr. Tambiah would still have to contend with a more formidable one than either. He would have to show that the Governor of the Colony is the representative of the Sovereign in the sense that petitions addressed to him enjoy the immunity, whatever it may be, conferred on petitions to the King himself by the Bill of Rights. In this connection I would note that it is the right of the subject in any of the colonies to petition the Sovereign directly (see the Colonial Office Regulations, Article 214, to which it is permissible for me to refer in this connection). In the present case, however, the petition was addressed, not to the King, nor to the Governor for transmission to the King, but to the Governor himself officially. We have, therefore, to consider what the position of the Governor of a Colony is; and on that point the law has long been settled past the possibility of question. It was suggested by Lord Mansfield, in the case of *Fabrigas v. Mostyn*,[1] that a Colonial Governor is in the nature of a Viceroy; but this dictum was expressly over-ruled by the Privy Council in the case of *Hills v. Bigge*,[2] in which Lord Brougham, delivering the judgment of the Judicial Committee, said that the Governor does not even represent the Sovereign generally, having only the functions delegated to him by the terms of his Commission, and being only the officer to execute the specific powers with which that Commission clothes him. The same view of the law was adopted by the Privy Council in 1879 in the case of *Musgrave v. Pulido*,[3] in even stronger terms. It would be necessary, therefore, for Mr. Tambiah, in order to succeed on the point with which I am dealing, to have proved by a reference to the terms of the Commission to the Governor of Ceylon that that part of the Royal prerogative which protects the subject in petitioning the Sovereign has in fact been delegated to him. No such proof was adduced at the trial, and in its absence, I hold without hesitation that the Bill of Rights, even if it is applicable to Ceylon, confers no immunity on the appellant in the present case.

I should perhaps say a word as to the minute in the *Government Gazette* of July 17, 1908, to which Mr. Thambiah called my attention, and in which His Excellency the Governor states that certain rules appended to the minute " are not intended in any way to interfere with that right of appeal to His Majesty's representative which is open to all of His Majesty's subjects. " It would clearly not be

[1] *Cowper 6.*
[2] *(1841) 3 Moore P. C. 465.*
[3] *5 Appeal Cases 102.*

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competent for the Governor, even if he desired to do so, to enlarge by any minute of this description the terms of his Commission from the Crown; and no such minute, in a case like the present, could take the place of formal proof of the Governor's position from the Commission itself. But it is clear, I think, that the minute does not bear the construction which Mr. Tambiah sought to put upon it. It merely affirms, what no one denies, that it is the right of the subject—a right impliedly recognized as far back as 1800 (*cf.* Proc., Aug. 20, 1800), to petition the Governor under the conditions which the law allows. I have now dealt—I am afraid at some length—with the constitutional questions which have been raised in the present appeal. It would perhaps have sufficed, however, to have disposed of the case on the ground on which it has been decided by the learned District Judge, viz., that section 180 of the Penal Code makes the act of which the accused has been convicted a criminal offence. I am clearly of opinion—and here I shall deal at once with all the questions involved in the construction of that section—that this decision is sound. Section 19 of the Penal Code includes in the definition of " public servant " every person holding any office in Ceylon by virtue of any Commission granted by the Crown. It is clear from the Colonial Office Regulations, to which I have a right to refer, that the Governor comes under this category.

It was, therefore, to a " public servant " within the meaning of section 180 that the accused's petition was addressed. It has been held by the learned Judge that the appellant knew or believed that the alleged facts which he embodied in that petition were false, and that he " intended thereby to cause, " or knew that he would likely cause, the Governor to use his lawful powers to the injury or annoyance of the police vidane, who is also a " public servant " within the meaning of the same section. It was urged by Mr. Tambiah that I ought to restrict the interpretation of the word " information " in section 180 to the statement of something in the nature of a criminal complaint, and that it ought not to be held to extend to an enumeration of alleged grievances by the person conveying the information. I am unable to adopt this view. I think that both by its terms and by the spirit of the enactment section 180 should be held to include the statement, falsely and maliciously, of any circumstances which may lead, and which are intended or known to be likely to lead, a public servant to take lawful action of any kind to the injury or annoyance of any of his subordinates. It was further contended by Mr. Tambiah that there is no evidence in the present case which showed that the Governor had " lawful power " to take action of the kind that I have referred to. In this instance, again, it would appear from the Colonial Office Regulations that the Governor has a power to direct the suspension of a public servant in the position of a police headman, who is here alleged to have been traduced. It is clear that a communication such as the

appellant made in his petition would tend to induce the Governor, if on inquiry he found that the allegations in the petition even required serious investigation, to put that power of suspension into operation. There can be no doubt that action which exposes a public servant to the danger of the exercise of the power of suspension comes within section 180. But I should be prepared myself to go further. It is within the power of the Governor (it was a power which, in fact, His Excellency exercised in the present case) to refer a petition of the character now before me to the Colonial Secretary for inquiry and report. In my opinion, it would be quite sufficient for the purpose of establishing a case on this part of section 180, if it were shown—and there is evidence to that effect—that it is within " the lawful power " of the Governor to institute inquiries, which must injure the public servant if the charge is established, and must annoy him even if it fails. The case cited by Mr. Tambiah of P. C., Ratnapura, No. 9,993,[1] in no way conflicts with this interpretation of the law. It was there held by Withers J. that an inquirer into deaths, to whom a complaint of alleged theft had been made, and who had no authority to summon the party accused before him or to do anything except pass on the information to some one else possessing that authority, had not " lawful power " within the meaning of section 180 of the Penal Code. The Governor is in quite a different position. He has himself power to institute inquiries and to take action, which may directly cause the prejudice contemplated by section 180. P. C. Hatton, No. 13,404,[2] decided by Browne A.J., appears to have equally little bearing on the point now in issue. In that case the Inspector of Police, to whom the false information was given, was held by the Judge to have no " lawful power " to act on it within the meaning of section 180, as the charges alleged in the information were not " cognizable offences. " Whether that case was rightly decided or not is a question that does not now arise for decision. It is not in point.

I have now dealt, I think, with all the questions arising on the construction of section 180. I proceed to add a few words in regard to Mr. Tambiah's argument that he was entitled, under section 434 of the Criminal Procedure Code, to obtain a copy of the notes of the learned Judge who tried the Veyangoda murder case in the Court of Assize. I confess that I think there is great force in Mr. Tambiah's argument on that point. Section 303 of the Criminal Procedure Code makes it the duty of the Judge to take notes of the evidence. Under section 226 (1) he is further required to " record " any objection that may be taken to a status of a juror. I think that the Judge's notes of the evidence in an Assize case are a record within the meaning of section 434 of the Code. They are, in fact, the only record that exists of the evidence given at the trial; and it would obviously give rise to great hardship in many cases if the parties had

[1] *S. C. Min., Sept. 11, 1894.* [2] *S. C. Min., Aug. 15, 1893.*

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no right of access to them. At the same time I do not think that Mr. Tambiah is entitled to the benefit of this point in the present case. He applied for a summons on the Registrar of the Supreme Court to produce the Judge's notes, but he allowed the case to go on to its conclusion, although no return to the summons had been received before the close of the trial; and I do not think that he can now successfully raise what I should be disposed to regard as a very arguable point.

As to the sentence of three months' rigorous imprisonment, I see no reason whatever for interfering with the decision of the learned District Judge. If it be the case, as appears from the evidence on the record, that the Governor receives some 4,500 to 5,000 petitions a year, it is of great moment that the numerous array of suitors which these figures indicate should be taught that while they have free access to the Governor by way of petition, they have no right to use this privilege for the purpose of falsely and maliciously destroying or imperilling the reputation of others and I can only say that I am very glad that there is nothing in the law which obliges me to hold that petitions of this description confer on their authors any absolute exemption from criminal liability. With these observations I dismiss the appeal.

Appeal dismissed.