RAM SINGH *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) October 25, 1943.]

Appeal against sentence—Court will endeavour to ensure that sentences conform to common standard.

Three convictions were entered against the appellant all arising from the sale of a bottle of illicitly distilled spirits to a native woman. The convictions and sentences were as follows:—

(1) Supplying liquor to a native. Fined £25 (in default six weeks imprisonment).

(2) Selling liquor without a licence. Fined £30 (in default two months imprisonment).

(3) Possession of spirits on which the full duty had not been paid. Fined £100 (in default six months imprisonment).

APPEAL against sentence.

S. Hasan for the appellant.

A. G. Forbes for the respondent.

CORRIE, C.J.—In exercising its jurisdiction as a Court of Criminal Appeal, this Court must seek, so far as possible, to maintain throughout the Colony a common standard of sentences. Clearly there cannot be an automatic sentence for each offence, but where it appears on the record that the offence committed is one of a common type with no unusual features, then the Court does endeavour to ensure that the sentence shall conform to the common standard of sentence for offences of that kind in the Colony.

The case before us is one of now only too common a kind, and there were, so far as the record discloses, no unusual facts.

Taking the matter as a whole, and bearing in mind that the accused has also been convicted and sentenced—and rightly convicted and sentenced—upon two charges under the Liquor Ordinance, I think the sentence imposed in respect of the offence under the Distallation Ordinance 1877 was somewhat severe.

The sentences on the first and second charges are therefore confirmed. The sentence on the third charge is reduced to a fine of £50 or, in default, six months imprisonment with hard labour.

CHANDASAMI AND ORS *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) November 17, 1943.]

Prosecution for assault—summary procedure—complaint made by police officer—Police officer appears for prosecution.

An information for assault was laid by a police officer and the prosecution was conducted by him. No evidence was called that this action had been authorised by the injured party.

HELD.—(1) The fact that the aggrieved party did give evidence for the prosecution was sufficient evidence that he had authorised the respondent to lay the information.

(2) Police officers have express authority under s. 22 of the Police Ordinance 1939[1] to prosecute before the Courts.

[**EDITORIAL NOTE.**—The grounds of appeal in this case are apparently derived from the wording of the repealed Summary Conviction Offences Ordinance, 1876, ss. 3 and 4. There is no similar provision as to complaints of assault in the Penal Code. See generally Criminal Procedure Code Cap. 4 ss. 2, 78 and 79.]

Cases referred to :—

Nickolson v. Booth and Naylor [1888] 16 Cox C.C. 373 ; 57 L.J.M.C. 43 ; 58 L.T. 187 ; 4 T.L.R. 346 ; 14 Dig. 169.

Webb v. Catchlove [1886] 3 T.L.R. 159 ; 33 Dig. 338.

APPEAL against conviction. The facts appear from the judgment.

L. Davidson, for the appellant.

A. G. Forbes, for the respondent.

CORRIE, C.J.—The appellants were charged under an information with having, on the 19th September, 1942, unlawfully assaulted and beaten one Maradia, contrary to s. 3 of Ordinance 5 of 1876, the Summary Conviction Offences Ordinance.[2]

That section provides that,

> " Every person who shall assault or beat any other person shall " upon complaint by or on behalf of the party aggrieved and on " conviction thereof either be imprisoned with or without hard " labour for any term not exceeding two months or shall pay a fine " not exceeding the sum of five pounds . . ."

S. 4 of the same Ordinance provides,

> " When any person shall be charged before any District Com- " misioner with an assault or battery upon any other person either " upon complaint of the party aggrieved or otherwise the said " District Commissioner may if the assault or battery is of such " an aggravated nature either by reason of the youth condition or " sex of the person upon whom or by reason of the nature of the " weapon or the violence with which such assault or battery shall " have been committed that it cannot in his opinion be sufficiently " punished under the provisions contained in the preceding section " proceed to hear and determine the same . . ."

The information was laid by the respondent and the case for the prosecution was conducted by him. Maradia, the person aggrieved, gave evidence ; and the Magistrate, after hearing his evidence and that of other witnesses for the prosecution and the appellant Chandasami in his own defence, found both the appellants " guilty under s. 4/5/76 " and sentenced them to one month's imprisonment with hard labour.

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[1] Cap. 47.

[2] *Repealed. Vide Penal Code Cap.* 5 (*Revised Edition Vol.* I *page* 300) *s.* 265.

The conviction under s. 4 is clearly in error, as the information was laid under s. 3 and the sentences imposed are within the Court's jurisdiction under that section. It is clear, therefore, that the conditions which would justify the Magistrate in proceeding under s. 4 were not fulfilled.

The first ground of appeal is that the respondent had no right or authority to lay the information on behalf of Maradia. In support, the appellants rely upon the judgment in *Nickolson v. Booth and Naylor*, 16 Cox, page 373. That was an appeal against a conviction under 24 and 25 Vict. c. 100, s. 42, the material part of which reads,

> " Where any person shall unlawfully assault or beat any other " person, two justices of the peace upon complaint by or on behalf " of the party aggrieved, may hear and determine such offence."

The facts were that Nickolson, the appellant in that case, was apprehended by the police and taken to the police office and there charged by the respondent, Naylor, with an assault. On the day fixed for the hearing, the respondent, Naylor, did not appear before the justices. A complaint was then made as to the charge of assault by the respondent, Booth, the sergeant of police to whom such charge had been made by Naylor previously, and the justices thereupon issued a summons against the appellant for such assault. No evidence was given that Naylor requested Booth to lay the complaint. It was contended on behalf of the appellant that there was no evidence to show that Naylor intended to prosecute that there was no party aggrieved, and that the party supposed to be aggrieved did not authorize the issuing of the summons. The justices overruled these objections and found the appellant guilty. On appeal the conviction was quashed. Hawkins, J. said,

> " Without the Act of Parliament, the Justices have no power " to convict summarily of an assault ; whereas by virtue of the " Act they can do so, but there is a condition precedent to their " jurisdiction, namely complaint by or on behalf of the person " aggrieved. In the present case there was no complaint by the " person aggrieved except at the police station ; and the police " constable had no authority to proffer the charge on the following " day in the absence of the complainant."

Grantham J. said,

> " I am of the same opinion. I think the meaning of the Statute " is that the complainant is to appear before the Justices and make " his complaint, or delegate some person on his behalf to do so. " When the party does not so appear, the Justices should treat the " matter as though there was no evidence to support the charge, " and dismiss it."

It is to be noted, however, that in the case now under appeal the person aggrieved, Maradia, did appear in Court and give evidence in support of the information, and I hold that it must be inferred that he had authorized the respondent to lay the information.

The second ground of appeal is that the respondent acted as advocate for Maradia. The appellant relies upon the observation made in *Webb v. Catchlove* [1886] 3 T.L.R., page 159, at page 160, by Denman J. who said he thought it a most unfortunate practice for police officers to be allowed to act the part of advocates in courts of justice, and

Hawkins J., who, in concurring, said that he thought it a very bad practice to allow a policeman to act as an advocate before any tribunal.

The question, however, is not whether it is a desirable practice that police officers should prosecute before the courts : the question is whether they have authority to do so, and this is expressly conferred upon them by s. 22 of the Police Ordinance 1939.

The appeal upon these two grounds therefore fails.

The only other question raised is that of sentence. As to this, the learned Magistrate has stated his reasons, and I see no grounds for interfering with the sentence which has been imposed.

The appeal is dismissed.

ISMAIL HUSSAIN *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) February 2, 1944.]

Order of Competent Authority empowered by Regulations of the Governor—Interpretation and General Clauses Ordinance, 1929[1]*—whether Courts will take judicial notice of Orders—liability of a servant or agent in case of breach of Price Order*[2]*—no substantial miscarriage of justice.*

Appellant was convicted of a breach of a Price Order—made by the Competent Authority appointed and empowered under Defence Regulations. He was at the time working as agent for a Transport Company.

HELD.—(1) An order of the Competent Authority is not an instrument of which judicial notice will be taken without proof.

(2) An employee has a duty to comply with a Price Order whatever his employer's instructions.

Cases referred to :—

(1) *Warrington v. Windhill Industrial Co-operative Society* [1918] 88 L.J.K.B. 280.

Buckingham v. Duck [1918] 88 L.J.K.B. 375 ; 120 L.T. 84 ; 26 Cox C.C. 349.

APPEAL AGAINST CONVICTION. The facts appear from the judgment.

P. Rice for the appellant.

A. G. Forbes for the respondent.

CORRIE, C.J.—This is an appeal against conviction upon an information charging the appellant with failing to comply with an order made by the Competent Authority under Regulation 50 of the Defence Regulations 1939. The particulars alleged are that he, on the 23rd January, 1943, charged a fare of £1 1s. 4d. in respect of a commercial vehicle on a journey from Nadi to Suva, being 8s. 4d. in excess of the fare prescribed by the Order.

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1 *Cap.* 1. *Vide now* s. 2 (38) *and* s. 10.
2 *Vide now Orders under Price Control Ordinance,* 1946.