Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal in the matter of Moses Amado Taylor, from the Supreme Court of the Colony of Sierra Leone; delivered the 26th January 1912.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD MERSEY.
LORD ROBSON.

[DELIVERED BY LORD ROBSON.]

The Appellant Moses Amado Taylor is a native of Freetown, in the Colony of Sierra Leone, and a barrister of the Honourable Society of Gray's Inn, where he was called to the Bar in June 1907. He was afterwards enrolled as a barrister and solicitor of the Supreme Court of the said Colony, and he now appeals from three Orders of that Court.

By the first of those Orders, dated the 3rd September 1908, he was fined 100*l.* and costs for an alleged contempt of Court; by the second, dated the 7th May 1909, he was fined 20*l.* in respect of an alleged forgery in the case of *Rex* v. *Carson*, and by the third, dated the 10th May 1909, his name was removed from the Roll of Barristers and Solicitors of the said Supreme Court.

On the 6th May 1908 the Appellant, acting professionally for one Michael Huggins, commenced an action in the Circuit Court of the Protectorate wherein the Plaintiff Huggins, who was a native railway pointsman in the service of

the Sierra Leone Government, sued one George Wright, who was a foreman platelayer in the same employ, for damages for an alleged assault by shooting on the 30th January 1908 at Kangahun, in the Protectorate. When the action was begun Huggins had been dismissed from his employment, and on the 20th June the Appellant wrote to Wright saying that if his client had not been peremptorily dismissed from work he would have advised him to drop the matter, and offering at the same time to settle it if Wright would agree to pay his client's wages for the six months' employment he had lost (amounting to about 10*l.*) and costs. He further stated that if these terms were refused he would apply for the Governor's fiat to have the action tried in Freetown before he (Wright) left the Colony.

No notice was taken of this letter.

On the 22nd August 1908 the Appellant applied to the Acting Chief Justice under Section 2 of the Debtor's Ordinance, 1883, for a warrant for the arrest of Wright on the ground, which was true, that he was about to leave the Settlement. The Appellant at the same time stated that if Wright would settle on the terms before suggested, his client would be satisfied. The Acting Chief Justice refused this application because, as he states in his Judgment delivered on the 3rd September 1908, he "saw "that all he (Appellant) wanted was to get "some money out of Wright and to use the "warrant as a lever."

On the 24th August 1908 an application was made on the information of Huggins to one of the police magistrates, Mr. Vergette, at Freetown, for a warrant for the arrest of Wright upon a criminal charge of assault, with intent to murder, on the 30th January 1908, and a warrant was issued accordingly. As the magistrate who granted it had no jurisdiction over matters arising in the Protectorate, except under the

authority of the fiat of the Governor, which was wanting in this case, this warrant was in excess of his jurisdiction. Afterwards, in the proceedings for the contempt, the magistrate stated that—

" In granting the warrant, I was misled by the Infor-
" mation, which did not go to show that the offence was
" committed in the Protectorate; it was brought to me
" while I was on the Bench."

The information was silent as to the place where the alleged assault was committed, but it so happens, however, that the warrant itself explicitly states that the offence took place at Kangahun in the Protectorate, a circumstance which must have been communicated by the Appellant or Huggins. There does not appear, therefore, to have been any concealment or deceit on the part of the applicant, though there may have been inadvertence on the part of the magistrate. The warrant was duly executed, and on the 25th August 1908 Wright was brought before the magistrate. The Appellant appeared for Huggins, the prosecutor, and at once asked the Court to remand Wright so that he (the Appellant) might apply to His Excellency the Governor to obtain a fiat to give the magistrate jurisdiction. The magistrate had, under the circumstances, no jurisdiction at all, and very properly refused that application, whereupon Wright was discharged.

On the 27th August 1908 a summons was issued by the Acting Chief Justice and served on the Appellant, calling on him to appear and show cause why an attachment should not issue against him for contempt of the Circuit Court of the Protectorate in causing Wright to be illegally arrested—

" in gross contempt and defiance of the refusal of the Judge
" of the said Court on the 22nd August 1908, to issue a
" warrant for the arrest "

of Wright.

The summons was heard on the 29th and 31st August 1908 by the Acting Chief Justice,

who called and examined Wright, and the magistrate, Mr. Vergette. The sole question then to be determined was whether or not the prosecution and arrest of Wright was a contempt of court. The Acting Chief Justice came to the conclusion that it was. He was opinion that the Appellant and Huggins resorted to the criminal proceedings and procured the illegal arrest as a mere lever to get the money they were demanding from Wright.

"The whole proceeding"

said the learned Judge

"was simply an abuse of a process of justice,"

and he adds,

"I am satisfied that the contemnors, in initiating their "criminal proceedings, were influenced by the intention of "defying me for having refused them the civil warrant of "arrest they applied for, and Taylor in particular had this "object in view, for when I refused him the warrant, he "became impudent and threatened to complain to the "Secretary of State."

* * * * *

"Even if the warrant had been valid, a contempt would "have been committed, and the illegality of the warrant "only intensifies the contempt."

It was the recourse which this solicitor had, on behalf of his client, to another tribunal and a different process, in order to get what the learned Judge had decided he was not entitled to have, which constituted, in the learned Judge's view, the essence of the contempt.

It is true that the learned Judge found as a fact that the Appellant was not acting in good faith, but the sense in which that charge is put forward needs some explanation. It is not suggested, or certainly there is no evidence to support such a suggestion, that Huggins did not believe in the justice of his claim and did not so instruct his lawyer. It was, indeed, pointed out by the learned Judge that the alleged assault was seven months old, and that if the contemnors had been acting in the interests of Justice they

would have taken their proceedings earlier, but mere delay in such circumstances can scarcely be advanced as a proof that the proceedings were fraudulent. It may be that the alleged contemnors have made themselves liable to proceedings at the instance of Wright; that is a question on which their Lordships express no opinion whatever, and have no adequate means of forming one; it may be that the conduct of the Appellant may turn out to be open to strong animadversion from other points of view than that of contempt of court, but for the purposes of the present proceeding it has not been proved, and cannot be assumed, that the proceedings before the magistrate were tainted by any fraud on the part of the Appellant.

The question is therefore narrowed down to the bare ground stated in the summons, namely whether under the circumstances, procurement of the warrant and the arrest consequent thereon constituted in law a contempt of the Supreme Court. Their Lordships think they did not. Where a Plaintiff who has been refused a warrant for the detention of the Defendant by a Civil Court straightway starts a criminal process on the same subject matter, and, by means of allegations to which the Civil Court attached no credit, obtains his warrant from a different Court, almost as a matter of course, he undoubtedly runs several risks of a serious character. He is not, however, restricted by law to a single form of remedy. He may pursue all the legal remedies appropriate to his grievance, and his conduct does not necessarily involve any punishable contempt of the Civil Court, whatever may be its other consequences.

The next order complained of, that of the 7th May 1909, arose out of the case of *Rex* v. *Ganson and others* in the Supreme Court, in which the Appellant was retained to defend three of the

accused. He was desirous of securing the attendance of two witnesses, Ashley and Gittens, who were prison warders, and applied to the Master of the Supreme Court for subpœnas for them. The subpœnas were accordingly issued on the deposit by the Appellant of the conduct money, or allowance usual for witnesses of that class, (there being no fees payable), and were duly served by the bailiff. It turned out that the witnesses named said they knew nothing about the case, so the Appellant asked them to return the subpœnas to him, which they did. He then struck out the names of Ashley and Gittens, and substituted for them the names of two labourers, Lamina and Sorie. The subpœnas, so altered, were served by the Appellant on Lamina and Sorie, and one of them, Lamina, was called and gave evidence. On these facts being disclosed at the trial the learned Chief Justice ordered Lamina's subpœna to be impounded.

Proceedings were subsequently taken against the Appellant in the Police Court at Freetown on the charge that he had forged the subpœnas delivered to Lamina and Sorie.

The facts above stated, which were never in dispute, and which constituted the whole case against the Appellant on this head, were then duly proved, with one additional circumstance worthy of note. It appeared on cross-examination of the Deputy Master and Registrar of the Supreme Court, who is also Under Sheriff, that the Appellant called on him on 27th February 1909 for a subpœna for one Anderson. At that time the other subpœnas, including those for Ashley and Gittens, had been issued, and the Deputy Master admitted that the Appellant told him that he wanted some other witnesses substituted. He clearly referred to a proposed substitution of names in the existing subpœnas. The Deputy Master never told him that new subpœnas would

have to be taken out. He made no protest or objection. It did not seem to strike him as being in any way a serious matter, though, possibly enough, if any one had paused to think about it, it would have been recognised as an irregularity.

The Appellant was committed for trial, and on the 1st May 1909 the Attorney-General preferred an information against the Appellant charging him with (1) altering two copies of a subpœna with intent to defraud, (2) serving the copies, so altered, with intent to defraud, and (3) uttering forged subpœnas, with intent to defraud, knowing that they were forged.

The case came on for trial before the Chief Justice on the 3rd and 7th May 1909. Some of Appellant's colleagues at the Bar made a representation to His Honour, pointing out that the effect of his pleading to the information would be a conviction for an indictable offence, the consequence of which would be the removal of his name from the Roll of the Inns of Court in London. His Honour, therefore, on the application of the Appellant's counsel, consented that a plea should not be taken, the prisoner admitting his guilt and submitting to a fine of 20*l*., which was paid.

Their Lordships are of opinion that the facts alleged against the Appellant did not suffice to establish the very serious offence with which he was charged. The evidence does not show or suggest any intent to defraud on the part of the Appellant, and, indeed, there seems to have been no motive so far as he was concerned which could give rise to any such intent. At the most he committed an irregularity for which some pecuniary penalty on his part was an adequate punishment.

A fresh proceeding was then immediately instituted against the Appellant to have him struck off the Roll of barristers and solicitors of

the Supreme Court of the Colony, and on the 10th May 1909 the Chief Justice made an order to that effect. This is the third order complained of. It is founded entirely on the two alleged offences already dealt with, and must stand or fall with them. It is true that the Chief Justice in giving his reasons for this order refers to the Appellant's "conduct in other professional matters" as rendering him unfit to be on the Rolls of the Court, but no such matters are specified for the information of their Lordships, nor has the Appellant been heard upon them. Their Lordships will, therefore, humbly advise His Majesty that this Appeal should be allowed; that the Order of the 3rd September 1908, should be discharged, and the sum of 100*l.* and the costs paid thereunder by the Appellant be returned to him; that the Order of the 7th May 1909 be discharged, except in so far as the same accepts the offer of the Appellant to pay the sum of 20*l.*; and that the Order of the 10th May 1909 be discharged, and the name of the Appellant restored to the Roll of the Supreme Court of the Colony of Sierra Leone.

No order is made as to the costs of this Appeal.

In the Privy Council.

IN THE MATTER OF MOSES AMADO TAYLOR.

DELIVERED BY LORD ROBSON.

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