ORIGINAL JURISDICTION (*a*)

Ex parte P. VARADARÁJULU NÁYUDU.

Where a magistrate has, in the exercise of his discretion, refused to proceed with a criminal charge pending a civil action in respect of the matter out of which the charge arose, a mandamus will not be granted to compel the hearing of the charge.

1862. *November* 18. BRANSON moved for a rule nisi for a mandamus directed to Thomas George Clarke, Magistrate of the Town Police Court of Madras, to take the necessary information of Pasalaikutti Varadarájulu Náyudu, and to try his complaint against Emberumán Svámi.

It appeared from the affidavit in support of the motion that in July 1862 Varadarájulu was in want of money. In order to get funds he gave Emberumán his promissory note for 2,000 rupees, which sum Emberumán undertook to obtain for him upon the security of the note. Emberumán, however, did not get him the money, but indorsed the note to one V. Ratna Mudali. Varadarájulu, after frequent applications to Emberumán, in September 1862 charged him with having fraudulently induced the delivery of the note in question, and then applied to Major T. Evans Bell, Deputy Commissioner of Police for the town of Madras, for a summons founded on the charge. Major Bell referred him to Mr. Clarke the magistrate. Mr. Clarke referred him back to Major Bell, who, on the 28th September, refused to grant the summons. Varadarájulu again went to Mr. Clarke, who granted him a summons attendable on the 6th November. On that day, however, when the case had been opened, Mr. Clarke refused to proceed with it then, inasmuch as there was an action on the note pending in the Civil Court, in which Ratna Mudali, the indorsee, was plaintiff and Varadarájulu defendant. He thereupon dismissed the summons.

(*a*) Present Scotland, C. J. and Bittleston, J.

1862. *November* 18.

Branson submitted that Mr. Clarke, having issued the summons, was bound to enter upon and proceed with the investigation.

SCOTLAND, C. J. :—There is no ground for granting this rule. No authority has been cited, and we must decide from our recollection of the principles and cases applicable to the subject. There are two or three decisions establishing that while a civil action is pending, a court or magistrate may refuse to entertain a charge of perjury relating to the subject of the action—the reason, of course, being that otherwise, even though the charge should fail, the case of one or other of the parties might be prejudiced. The practice of the Central Criminal Court in London is not to try an indictment for perjury while the case out of which it arose remains in any way undetermined. A mandamus, no doubt, is the proper remedy when a magistrate refuses to exercise his jurisdiction, whether such refusal be caused by wilfulness or error. But, on the other hand, a mandamus is a high prerogative writ, and ought not lightly to issue; and is therefore never granted unless it is quite clear that there has been an improper declining of jurisdiction. Then do the facts before the Court show any such declining of jurisdiction on the part of the magistrate? I think not. [His Lordship here stated the facts above set forth, and proceeded thus :] There are cases in which for the ends of justice a magistrate may properly refuse to enter upon a criminal prosecution until after the termination of a civil proceeding pending at the time and connected with the criminal charge. Such are the cases of perjury to which I have already referred. And the same may be said of the present case. It appears that the indorsee Ratna has brought his action against the maker of the note, Varadarájulu. It may be an important question in the action whether or not the terms on which the note was delivered to Emberumán were such as to give him a right to endorse it over, and it might seriously prejudice the trial of that question if the criminal charge were now proceeded with against Emberumán.

I think therefore that this was a case in which the magistrate might fairly exercise his discretion, and refuse as he did, merely to go on with the case for the present. I

1862. November 18.

think however he would have acted more regularly if he had not dismissed the summons, but adjourned it till the close of the proceedings in the civil court. But this error, if it be one, is not such as to warrant the Court in issuing a mandamus.

BITTLESTON, J. :—It seems to me also that there is no ground for granting the rule applied for. Mr. Clarke simply exercised the discretion which he undoubtedly possessed. It is un necessary for us to determine whether in such exercise he was right or wrong. A magistrate's errors of judgment cannot be corrected by a writ of mandamus to rehear. As to the cases referred to by the Chief Justice, I recollect that on one occasion in the late Supreme Court, during a trial for perjury, it was objected that we should not go on, because an appeal to the Privy Council had been filed against a decision in a civil suit concerning the matter on which the perjury was assigned. But in that case I thought that under the circumstances I was not bound by the practice of the Central Criminal Court, and in the exercise of my discretion directed the trial to proceed.

Rule refused.

NOTE.—See *Rex* v. *Ashburn* 8 Car. & P. 50: *Regina* v. *Bartlett* 1 Dowl. & L. 95; *Regina* v. *Ingham* 14 Q. B. 396.