

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal in re
Abraham Mallory Dillet, from the Supreme
Court of British Honduras; delivered 19th
March 1887.*

Present :

LORD WATSON.

LORD FITZGERALD.

SIR BARNES PEACOCK.

This appeal is brought by Abraham Mallory Dillet, of the Inner Temple, barrister-at-law, against a verdict returned by a jury, on the 6th September 1884, finding him guilty of the crime of perjury before William Anthony Musgrave Sheriff, who was at that time Chief Justice of the Supreme Court of British Honduras; and also against a consequential order of the Chief Justice, dated the 27th March 1885, directing the Appellant to be struck off the list of practitioners of that Court. Such appeals are of rare occurrence; because the rule has been repeatedly laid down, and has been invariably followed, that Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done.

Along with his petition for leave to appeal, the Appellant produced a printed report of the charge of the Presiding Judge, and *inter alia*

alleged (Reason XIII.) that the Judge had made statements to the jury with reference to his conduct on other occasions, of which no evidence had been given at the trial; and he referred in particular to three extracts from the charge, marked respectively A, B, and C, as calculated to prejudice unduly the minds of the jury against him. By Order in Council of the 12th August 1885, Her Majesty directed the petition and these extracts to be referred to the Chief Justice, in order that he might make such observations thereon as he might think fit, and further ordered that he should be at liberty to appear and show cause against the prayer of the petitioner. His Honour did not avail himself of the leave thus given him, but forwarded his observations to the Registrar of the Privy Council. These observations were submitted to this Board; and upon their report Her Majesty, by Order in Council of the 3rd April 1886, allowed the Appellant to enter and prosecute his appeal upon the ground stated in the thirteenth reason of his petition, namely, that the conviction was obtained in a manner so unsatisfactory that the conviction alone ought not to be conclusive as a ground for striking him off the roll. The Chief Justice was duly served with the appeal, but has not made appearance.

The prosecution of the Appellant for perjury had its origin in these circumstances. The Chief Justice received a communication from Mr. Goodman, the Attorney General of Honduras, bringing under his notice the conduct of the Appellant in the Inferior Court at two sittings of the Court held upon the 17th June 1884, and in the presence of the Acting Magistrate. His Honour thereupon directed the affidavits of three persons who were present on these occasions to be prepared and submitted

to him for his approval, and these were subsequently sworn to by the deponents. Two of them (the Attorney General and the Acting Magistrate) stated that the Appellant "appeared " to be under the influence of drink;" the third (Cato, the Court crier), "I saw that he was " intoxicated." The Chief Justice appointed the Appellant to answer these affidavits, and he accordingly made an affidavit, in which he stated that he was not "under the influence of drink," and denied Cato's statement that he was intoxicated. Upon consideration of these statements in his affidavit, the Chief Justice, acting under the authority of 14 & 15 Vict., cap. 100, which has been extended to Honduras, directed the Attorney General to prosecute the Appellant for perjury; and a criminal information was filed by that officer on the 15th August 1884, containing two counts, one founded upon the Appellant's contradiction of himself and the Magistrate, and the other upon his contradiction of Cato's statement. The trial commenced upon the 27th August 1884, and, after occupying eight days, terminated in a verdict of guilty by a majority of five to two, accompanied by a recommendation to the sympathy of the Court.

It is very unfortunate that, owing to the fact of there being but one member of the Supreme Court of British Honduras, the trial took place before the same Judge who had directed the affidavits to be prepared and submitted to him, had appointed the Appellant to answer them, and, upon the affidavit and answer being made, had directed the prosecution. These circumstances may in some measure account for, although they cannot, in the opinion of their Lordships, justify, many of the observations which were addressed by him to the jury.

The issue which the jury had to try was a very simple one. They had to consider, in the first

place, whether the accused was under the influence of liquor on the occasions libelled; and, in the second place, whether he knew and believed that he was so at the time when he made affidavit to the contrary. Unless they were satisfied on both these points, the jury had no right to find the Appellant guilty. A man labouring under excitement may appear to others to be under the influence of drink when he is not; and, although he is actually under that influence, he may be unconscious of the fact. The only question submitted to the jury was, whether the Appellant's behaviour in Court on the 17th June 1884 was due to drink. A misdirection of that kind would not necessarily afford a ground for setting aside a conviction in a criminal case. But, in the extract C, which the Chief Justice in his observations states to be "substantially correct," he thus put the case against the accused:—"Pause for a second and reflect what the result would be of a verdict in favour of Mr. Dillet. It would be to brand the Attorney General of the colony, a Magistrate, and others as perjurers, and are you going to brand all the members of my bar as alike perjurers and conspirators? If the jury think so, let them do their duty regardless of consequences." Comment upon that language is needless. It grossly misrepresented the real issue, and was most unfair to the accused, whose acquittal by the jury would have cast no imputation of perjury, or even of untruthfulness, either upon the officials alluded to or upon the members of the Honduras bar.

The Chief Justice does not in his observations impeach the substantial accuracy of the extract A, which is sufficiently vouched by the affidavits produced, but he vindicates the remarks contained in that extract by pointing out that the

Records in the four cases therein referred to were put in evidence by the prosecutor before the case was closed, and that the Appellant was the first to refer to these cases of contempt. Apparently, the Chief Justice has failed to appreciate the gravamen of the objections which the Appellant takes to the remarks in question, which are, in their Lordships' opinion, well founded. The Judge not only uses these Records in a manner altogether unwarrantable, but he converts himself into a witness, and without being sworn makes statements to the jury regarding a visit of the accused to his (the Chief Justice's) private house, and other matters, which are neither to be found in these Records nor in the evidence.

The remarks contained in Extract B are a little, but not much, less objectionable. Their Lordships have not, in estimating their character, taken into account a reference which is therein made to a certain "tragical or dark transaction." The Chief Justice, in his observations, states that he has no recollection of making, and is under the impression that he did not make, such a reference, and their Lordships have assumed, for the purposes of this appeal, that he did not do so; although there are affidavits produced by persons who heard the words, including one reverend gentleman who took them down in shorthand at the time they were uttered to the jury.

It would neither be pleasant nor profitable to criticise more minutely the directions of the Chief Justice to the jury, so far as contained in these extracts. Their Lordships are of opinion that these directions were grievously unjust to the Appellant, and in many instances outraged the proprieties of judicial procedure. A conviction obtained by such unworthy means cannot be permitted to stand; and their Lordships will humbly advise Her Majesty to set aside the

verdict and conviction appealed from. Seeing that the Appellant has already undergone the sentence which followed upon the verdict, it is unnecessary to order a new trial. Their Lordships will also humbly advise Her Majesty to reverse the order of 27th March 1885, removing the Appellant from the roll of practitioners of the Supreme Court of British Honduras. Their Lordships will direct a copy of their judgement in this case to be communicated to one of Her Majesty's Secretaries of State.
