

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Chan Hang Kiu and Others, in the Matter of the Lai Hing Firm (Bankrupts), from the Supreme Court of Hong Kong, delivered the 2nd March, 1909.

Present at the Hearing :

LORD MACNAGHTEN.
LORD ATKINSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

This is an Appeal from the Supreme Court of Hong Kong, confirming an Order made by the Chief Justice sitting in Bankruptcy committing the Appellants to prison for three months as for a contempt of Court in respect of wilful and corrupt perjury found by the Court to have been committed by them as witnesses in open Court on the trial of an issue in Bankruptcy before the Chief Justice on the 4th, 5th, 6th, 7th, 9th and 10th days of April 1906.

The committal purported to be made pursuant to Section 31 of Ordinance No. 3 of 1873, which is in the following terms :—

If in any cause, action, or suit, civil or criminal, or in any proceeding connected therewith, it appears to the Court that any person examined as a witness has committed wilful and corrupt perjury, or that any person in any affidavit required to be made before the Court has been guilty of the like offence, then, in each and every such case, it shall

and may be lawful for the Court to direct a prosecution for perjury to be forthwith instituted against such person in order that he may be punished according to law ; or where such perjury is committed by any person examined as a witness in open Court, it shall be lawful for the Court, instead of directing such prosecution to be instituted as aforesaid, either to commit such witness as for a contempt of the Court to prison for any term not exceeding three months, with or without hard labour, or to fine such witness in any sum not exceeding one hundred dollars.

On the 20th April, 1906, a motion was made before the Chief Justice for the discharge of the committal order, on the ground that the Appellants were not informed by the Chief Justice what statements made by them respectively constituted the alleged perjury, and on the ground that, before sentence was passed upon them, an opportunity was not given to them of being heard in their own behalf or of showing cause why they should not be so committed.

The Chief Justice confirmed the Order, and on appeal to the Full Court, consisting of himself and Wise, J., the decision of the Chief Justice was affirmed.

The issue on the hearing of which the perjury was found by the Chief Justice to have been committed was :—

Whether one Wong Ka Chuen was at the date of the presentation of the Petition herein a partner in the debtor firm.

The Appellants gave evidence in support of the contention that he was.

The jury found that he was not.

After the verdict was given, it appears from the shorthand note that the Chief Justice desired the eight witnesses who had given evidence in support of the affirmation, *i.e.*, the Appellants and one other who had left the Court, to

be called forward. He then addressed them as follows, the Interpreter explaining what he said :—

“The eight witnesses have to my mind been
 “guilty of the most flagrant conspiracy to defraud the
 “alleged partner, Wong Ka Chuen. They have each
 “one been guilty of the most corrupt perjury, and
 “in virtue of the provisions of the law which em-
 “powers me to deal at once with such cases I commit
 “each of them to prison for three months without
 “hard labour.”

With regard to the first ground of objection taken by the Appellants, namely, that they were not informed by the Chief Justice what statements made by them respectively constituted the alleged perjury, their Lordships are of opinion that it is not established in point of fact. The statement made by the Chief Justice was to the effect that the whole evidence given by the Appellants convinced him of a conspiracy on their part to make it appear that Wong Ka Chuen was at the date of the presentation of the petition a partner in the Lai Hing firm, and that all they had said material to that issue was a tissue of deliberate falsehoods. Their Lordships think that, having regard to the nature of the charge he was making against the Appellants, it did not admit of being formulated in a series of specific allegations of perjury, and that the gist of the accusation he was making ought to have been sufficiently clear to them from the language which he employed to express it. They agree with the Chief Justice that the alternative course left open to the Judge by the Ordinance of committing a witness as for contempt of the Court contemplates summary proceedings on the spot not involving a statement or trial of specially formulated issues. But though, in their Lordships' opinion, the language used by the Chief Justice

was quite sufficiently specific to make the Appellants aware of the pith of the charge against them, they think that the Chief Justice should, before sentencing them, have given them an opportunity of giving reasons against summary measures being taken. This need not have involved, as suggested in argument, the case being thereupon retried and witnesses called, which would have deprived the alternative course of the summary character which (it is reasonable to suppose) was deemed important by the framers of the Ordinance who enacted it as an alternative to formal proceedings for perjury; but it would have given an opportunity for explanation and possibly the correction of misapprehension as to what had been in fact said or meant. The Report of this Board in *Re Pollard* (5 Moore N.S. 111) treats the giving of such opportunity as essential in cases of committal for contempt of Court. The Chief Justice treated *Pollard's* case as a binding authority, but as not applying to a case of committal for perjury, notwithstanding the words of the Ordinance "as for a contempt of Court." But the reason given in the Privy Council for the rule is, that contempt of Court is a criminal offence. *A fortiori*, therefore, it would be essential before a summary conviction for perjury, unless the statute dispensed with it, which cannot be alleged in this case. Their Lordships will therefore humbly advise His Majesty that the Appeal be allowed, the Judgments of the Supreme Court of the 24th April and 16th May, 1906, reversed, and the committal order rescinded.

There will be no order as to the costs of the Appeal.