QUEEN *v.* MARTINO PERERA *et al.*

1897. *November 3 and 8.*

D. C., Colombo, 1,438.

Criminal Procedure Code, ss. 247 and 263—Committal upon a charge of grievous hurt where evidence disclosed also attempt to murder—Jurisdiction of District Court.

A District Court is bound to try and determine a case where the accused have been duly committed on charges triable by it, notwithstanding that the evidence disclosed also a higher offence beyond its jurisdiction.

THIS case came on for trial before the District Court of Colombo upon a committal by the Police Magistrate of Colombo, the first accused being charged under section 314 of the Penal Code with voluntarily causing hurt to one Stephen Perera, and the second accused, under section 316, with causing grievous hurt to the same person.

Stephen Perera deposed as follows :—" I was coming from Gal-
" kissa and turned at a junction of roads at 12 or 1 during the day
" to go home. After going a short way I heard steps behind. I
" turned and saw it was second accused. He said ' Stop, you son
" of a whore.' I did not stop, and he chased after me, and I ran
" away. Then he said, ' If you run I will kill you.' I ran
" because I got afraid, as he was angry with me. I ran to my
" house, crying out, ' Sister, Pelis is coming to kill me.' Just
" before I cried out, and when I was nearing the house, accused

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"fired a shot. I did not see him fire, but only heard the sound. "I was not hit, and cannot say if it came nearer. I cannot say if "he aimed at me or fired to frighten me. I entered the house, and "was going out by the back door, when accused came and hit me "with a club. I raised my right arm and the blow fell on it and "on the door frame, and the club fell down. I tried to run, and "first accused held my hair and dragged me towards their kitchen, "and second accused assisted him. I was taken into a room next to "the kitchen, and I caught hold of second accused's hand, in which "there was a pistol, and he bit my finger. I caught hold of his hand "with both hands and let go when he bit me. Second accused then "struck me with a piece of iron on the forehead. I did not "see where he got it from. I then lost consciousness. When I "recovered I was in Colombo hospital, where I was examined by "Dr. Oorloff. I was in hospital about a month."

Another witness swore :—"The pistol was pointed at Stephen's "back, but I could not say exactly at what spot. They were both "running at the time, and therefore I think he did not aim care-"fully. He appeared to be firing at Stephen as if he intended to "hit him."

At this point the Additional District Judge (Mr. Pagden) considered that there was evidence of an attempt to murder under section 300 of the Penal Code, and inquired of the prosecuting Crown Counsel whether the Attorney-General would transfer the case for trial before the Supreme Court, by virtue of its power under section 47 of the Courts Ordinance.

The Attorney-General declining to transfer, the Additional District Judge discharged the accused, holding that he had no jurisdiction to try the case.

The Attorney-General appealed.

Layard, A.-G., appeared in person and contended that though he could not by a fiat issued under the provisions of the Criminal Procedure Code confer jurisdiction on a Judge who had not territorial jurisdiction to try a case (*Queen v. Elawa Tamby, 8 S. C. C. 151*, and *Queen v. Mathes, ib. 200*), and though subsequent legislation had conferred on him the power of transferring cases from one Court to another irrespective of whether or not such Court had territorial jurisdiction, yet that, in view of the judgments in *Queen v. Kulandaval* (*1 S. C. R. 189*) and *Queen v. Mendis, 249*, the District Court had no power to review the indictment and take exception to the commitment, but was bound to try such offenders for such offences within its jurisdiction as may be committed for trial before it on the fiat of the Attorney-General.

8th November, 1897. LAWRIE, A.C.J.— 1897. *November 8 and 8.*

I am not able to share the opinion expressed by the learned District Judge which led to the discharge of the accused.

These men were being tried on an indictment for causing grievous hurt. That hurt is said to have been caused by a club and a piece of iron, and by a bite by the teeth of the accused.

It appeared that, besides inflicting these injuries, one of the accused fired a pistol, which did no harm. There is no evidence that it was loaded with shot or ball. The District Judge discharged the accused because there was (he says) an attempt to murder. Perhaps there was, but that was not the charge which the Judge had been asked to try. He was bound to try the accused on the charge of hurt set forth in the indictment.

I do not at present see that a conviction or acquittal on the indictment for causing hurt would have been a bar to a subsequent trial for attempting to commit murder. It seems a different thing actually to cause hurt by one instrument and to commit murder by another instrument.

I set aside and remit for trial *de novo*.