1895.
October 18.

JANSEN *v.* ARNOLIS.

P. C., Colombo, 4,042.

(Itinerating Police Magistrate, Western Province.)

Criminal Procedure Code, ss. 229 and 403—Ordinance No. 22 of 1890, repealing Chapter XIX. of Criminal Procedure Code—Right of appeal where accused has pleaded guilty—Mode of recording admission of offence by accused—Criminal Procedure Code, s. 220—"Additional Police Court"—status and powers of Magistrates of one Court sitting apart from each other—Ordinance No. 1 of 1889, ss. 55, 56, 57—Exercise of wise discretion in entertaining complaints.

Since the repeal of section 229 of the Criminal Procedure Code, section 403 has become inapplicable to the procedure provided by section 220 of the amending Ordinance No. 22 of 1890, and now there is no statutory bar to an appeal by an accused person who has been convicted in a Police Court summarily upon his own admission of guilt.

The terms of section 220, as regards the mode of recording the admission of the accused, must be strictly complied with. It is not enough to record that "he pleaded guilty to the charge," but the exact words used by him should be set forth.

Ordinance No. 1 of 1889, sections 55, 56, and 57, does not admit of any such Court as "the Additional Police Court of————," as if each of the several Magistrates whom the Governor may appoint to a Court constituted a distinct and independent Court.

The proceedings before each such Magistrate should be intituled "In the Police Court of———— (naming the division), holden at ————, before ————, one of the Magistrates of the said Court."

There is no objection to one Magistrate of a Court entertaining a complaint and issuing process to compel the attendance of an accused person before a Police Court, and the inquiry or trial being undertaken by another Magistrate of the same Court; nor is it objectionable for one Magistrate to admit to bail a person who has been dealt with by another Magistrate of the same Court, or to perform a purely ministerial act like the communicating to an accused the order of the Supreme Court in appeal, and to give effect to such order.

1895.
October 18.

BONSER, C.J.

But where one Magistrate has commenced to hear a case, he must continue it to the end, unless it falls within section 89 of the Ordinance No. 1 of 1889.

Observations on the exercise of wise discretion in entertaining plaints.

THE facts of this case appear fully in the judgment of the Chief Justice.

Bawa, appeared for the accused appellant.

Layard, A.-G., was heard as *amicus curiæ*.

18th October, 1895. BONSER, C.J.—

In this case the charge against a man named Arnolis was that, being the occupier of a house, he kept the same as a common gaming-place. in breach of section 5 of Ordinance No. 17 of 1889. The record states that he was brought up and the particulars of the offence explained to him, and it is then recorded that "he "pleaded guilty to the charge," and on that plea he was convicted. The case comes up before us in revision, for an appeal which was lodged was rejected by the Magistrate, apparently because of section 403 of the Criminal Procedure Code, which provides that "when an accused person has pleaded guilty and been convicted "by a District or Police Court on such a plea, there shall be no "appeal." In the Code, as it was passed originally, there was a section, which was numbered 229, which provided that, after the charge had been read and explained to the accused, he should be asked whether he was guilty, or had any defence to make; and if he pleaded guilty the Magistrate was to record the plea, and might in his discretion convict him thereon. But that question was not a question to be asked at the commencement of the proceedings. It was a question which was to be asked after the evidence had been taken for the prosecution, and the Magistrate was of opinion that there was ground for presuming that the accused had committed an offence which the Court was competent to try. At that stage of the proceedings the Magistrate was to frame a formal charge, and it was after that formal charge had been read and explained to him that the accused was to be asked if he pleaded guilty to the charge, or wished to make any defence. In 1890 the Code was amended, and section 229 was repealed, together with other sections dealing with summary trials, and the chapter relating to summary trials was re-drafted. But in the new version the procedure to which I have referred as contained in section 229 found no place. Section 220 of the amending Ordinance provides, as did the Code previously, that at the commencement of the proceedings in a case summarily

1895. *October 18.*

BONSER, C.J.

triable the accused is to be asked if he has any cause to show why he should not be convicted. If he admits that he has committed the offence of which he is accused, his admission must be recorded as nearly as possible in the words used by him, and if he does not show sufficient cause why he should not be convicted, the Magistrate is to convict him. Section 403 is therefore inapplicable to the present procedure, now that the plea of guilty has been abolished, and it might just as well have been expressly repealed, as it has been impliedly, as far as Police Courts are concerned. It would no doubt have been expressly repealed had not the matter escaped the attention of the Legislature. The result is that now there is no statutory bar to an appeal by an accused person who has been convicted in a Police Court summarily on his own admission of guilt.

In this case it is to be observed that the Police Magistrate has not followed the direction given in section 220 of the Code. He has not recorded, as nearly as possible, the words used by the accused. As we have pointed out in several cases recently, that procedure is one that must be strictly complied with. The Magistrate has placed his own interpretation on what the accused said. The accused has a right to ask this Court to decide whether the interpretation placed by the Magistrate on his statement is a correct interpretation, and it is our duty to decide whether the Magistrate has correctly interpreted what the accused said. We cannot perform that duty unless we have the words as nearly as possible used by the accused. We must therefore quash this conviction. It is especially necessary, in a case like this, that the exact words used by the accused should be recorded. The offence of keeping a common gaming-house is a statutory offence, which is created by an Ordinance, the details of which are by no means easy to be understood, and we ought to be satisfied that the nature of this offence was clearly explained to the accused, and that he understood what the offence was of which he was charged. It is not sufficient to constitute the offence of keeping a common gaming-house, that the man should be the occupier or owner of the house, and that unlawful gaming should have gone on in that house; there are other elements required to complete the offence. So much for the merits of the case.

There are other circumstances in the case which call for our notice. The proceedings are intituled as having taken place in "the Additional Police Court of Colombo." Now, so far as we can ascertain—and we have had the advantage of the Attorney-General's assistance in the matter—there is no such Court as "the Additional Police Court of Colombo." Ordinance No. 1 of

1889, section 55. provides that "the Governor may establish in "every division of the Island one court to be called the Police "Court, and each court shall be holden by and before one person, "to be called the Police Magistrate, at such convenient place or "places within such division as the Governor may from time to "time appoint." Then section 56 provides for the case where the work in a division may be too much for one Police Magistrate, and it empowers the Governor to appoint more than one Police Magistrate to the same Police Court, and section 57 gives them power to sit apart, but whether one or a dozen Magistrates are appointed they are Magistrates of one and the same Police Court. That being so, the proceedings should be intituled "In the Police Court of ——— (naming the division), holden at ———, before ———, one of the Magistrates of the said Court." There is nothing in the Ordinance to countenance the idea which appears to prevail that each Magistrate forms a distinct and independent Court. The position of Magistrates sitting apart in the same division is analogous to that of Judges of this Court when they, as frequently happens, sit apart.

In the present case that idea has given rise to hardship to this accused, of which he has a right to complain. The offence was alleged to have been committed in Colombo. He was tried in Colombo before a gentleman who has been appointed as an Additional Police Magistrate of Colombo, and was convicted. He appealed against that conviction, and this Court quashed the conviction and ordered the accused to be discharged. The accused was undergoing his sentence in the Colombo jail. Instead of that order being carried out by the Magistrate who happened at the time to be sitting in the Police Court of Colombo, it was thought necessary that the decision of the Court should be communicated to the accused and his discharge effected by the Magistrate in person who had convicted him. That Magistrate happened to be holding his Court at a place many miles from Colombo, called Henaratgoda. The order of this Court seems to have been sent to him there, whereupon he ordered the accused to be brought up before him from Colombo, and he discharged him at Henaratgoda.

I understand that, in acting as he did, the Magistrate acted in accordance with what he believed to be the law laid down by this Court, and we were referred to a decision by Mr. Justice Clarence, then acting as Chief Justice, sitting alone, in an appeal from a Magistrate's Court, from which it would appear that he was of opinion that the Additional Police Magistrate had an entirely distinct jurisdiction from the

1895. *October 18.* BONSER, C.J.

permanent Police Magistrate of the division, according to the report in *1 C. L. R., p. 14.* In that case the Magistrate, after commencing the proceedings, transferred them to the Additional Police Magistrate. The learned Judge is reported to have said that, as far as he understood the position of the two Magistrates, it would seem that this was not a case in which the Additional Police Magistrate had joint jurisdiction, but rather a case of transfer from one Magistrate to another, and he appears to have treated it as a case of transfer, which only the Supreme Court could order to be made. No doubt, if one Magistrate of a Court has commenced to hear a case he must continue it to the end, unless it falls within the provisions of section 89 of Ordinance No. 1 of 1889. This decision, however, has not been followed by all the Judges of this Court, for recently in a case before my brother Withers, he held that where an information had been laid before one Magistrate, it was no objection to the conviction that the trial had been held before another Magistrate, and it seems to me that that was a sound view of the law. I can see no objection to one Magistrate of a Court entertaining a complaint and issuing process to compel the attendance of an accused person before a Police Court for the purpose of inquiry whether he has committed an offence which ought to be tried by a Superior Court, or for the purpose of his being summarily tried, as the case may be, and the inquiry or trial being undertaken by another Magistrate of the same Court; nor can I see any objection to one Magistrate admitting to bail a person who has been dealt with by another Magistrate of the same Court, or performing such a purely ministerial act as communicating to an accused person the order of the Court of Appeal, and giving effect to that order by discharging him. That is no interference with the principle that must be maintained, that where one Judge or Magistrate has undertaken judicial duties with regard to any case, the exercise of those judicial duties must not be interfered with by any other Judge or Magistrate of the same Court. I am glad to believe that our decision will facilitate the work of Magistrates by removing what has been felt to be an impediment in the ready discharge of their duties.

There was another matter of which the accused complained in this case. When he was discharged at Henaratgoda it happened by some mysterious chance that a police officer was ready there to re-charge him with the same offence from which he had just been discharged. The Magistrate entertained the complaint on the spot, and fixed a day, four days later on, for the hearing of the case in Colombo, and in the meantime ordered the accused to

find bail. Of course the accused could not be expected to find bail so far away from home, and the result was that he was sent back to jail. Although the Police Magistrate had jurisdiction to entertain the complaint, and therefore there was nothing illegal in his doing so, yet I think that he did not exercise his discretion wisely in entertaining the complaint at Henaratgoda. It was not such a complaint as required the immediate exercise of a Magistrate's powers. The complainant might very well have been referred to the Police Court held at Colombo. In all these cases the Magistrate must exercise his discretion. A murder case, for instance, would require immediate action, and a Magistrate would rightly use his discretion in entertaining the complaint and issuing process thereon, wherever he might happen to be. We do not wish to fetter in any way the discretion of Police Magistrates, but we call their attention to the fact that such an exercise of their discretion as was made in the present case entailed unnecessary hardship on the accused.

WITHERS, J.—

I entirely concur. If in my judgment, to which the Attorney-General has referred, I used language calculated to convey the opinion that the appointment of an Additional Magistrate to a Police Court constitutes a new and separate Court within the appointee's exclusive jurisdiction, I can only regret that. Henceforth, however, there can be no mistake.