UKKURALA *v.* DAVID SINHO.

P. C., Chilaw, 8,973.

1895.
December 4 and 9.

Ordinance No. 22 of 1890, s. 228—Discharge of accused upon absence of complainant—Illegality of subsequent trial and conviction.

In a case triable summarily, after once discharging the accused owing to the absence of the complainant, it is not competent for the Police Magistrate, under section 228 of Ordinance No. 22 of 1890, to re-summon him, and after evidence heard to convict him.

The original discharge should be treated as an acquittal, and once acquitted he could not be tried again.

ON appeal against a conviction, under the circumstances fully set forth in the judgment of the Supreme Court,—

Van Langenberg (with *Jayawardena*) appeared for appellant.

9th December, 1895. WITHERS, J.—

The conviction of the appellant of the offence of criminal trespass and theft of a bull must be quashed not because the verdict is wrong, but because the trial is fatally irregular.

The prosecution charges the appellant with these offences on the 23rd August last, in a written complaint, which the Magistrate entertained.

The accused was before the Court when the complaint was received and the particulars were explained to him. He denied the charge, made an explanation, and claimed to be tried.

The 19th of the month following was appointed the day of trial, and the accused entered into a recognizance to appear on that day. He appeared on that day, but the complainant did not.

The entry in the journal on that day, as signed by the Magistrate, is as follows :—" Complainant absent; accused present. Accused " discharged ; complainant fined Rs. 5, Crown costs, for not " proceeding with case. For October 7th."

1895.
December 4 and 9.
—
WITHERS, J.

Next day, it seems, the complainant came forward and excused his absence on the previous day, for the Magistrate remitted the fine and directed summons to the accused requiring his attendance at the trial deferred to the 17th October.

Now this, being a case on complaint of an offence summarily triable by the Magistrate, came strictly within the purview of section 228 of Ordinance No. 22 of 1890, which enacts : "If the "summons has been issued on complaint, and upon the date "appointed for the appearance of the accused, or any day subse-"quent thereto, to which the hearing may be adjourned, the "complainant does not appear, the Police Magistrate shall, notwith-"standing anything hereinbefore contained, acquit the accused, "unless for some reason he thinks proper to adjourn the hearing "of the case to some other day."

The Magistrate had only the alternative open to him of acquitting the accused, or adjourning the hearing of the case to some other day for some reason he thought proper.

He did not adjourn the case that day, but discharged the accused, seeing no reason to adjourn the hearing of the case to some other day. He should have acquitted the accused, and I am bound to act as if the order which the law required had been made, and to treat the discharge as an acquittal. Once acquitted, the appellant could not be tried again, and hence this conviction cannot stand.