1896.
July 6.

CHARLES *v.* CHARLES *et al.*

P. C., Badulla, 16,292.

Criminal Procedure Code, chapters XVI. and XIX.—Procedure to be adopted where in non-summary inquiry facts disclose offence summarily triable—Fresh charge—Opportunity for defence.

Where in an inquiry into a complaint of an offence not summarily triable by a Police Magistrate he finds at the conclusion of the prosecution that the facts proved against the accused amount to an offence summarily triable under chapter XIX. of the Criminal Procedure Code, he ought to stay the proceedings as a non-summary inquiry, make an order formally discharging the accused from the graver offence, frame a charge as for a summary trial, give the accused notice that he is on his trial, and afford him sufficient time to prepare for his defence.

THE facts of the case appear in the judgment.

6th July, 1896. WITHERS, J.—

Two persons join in an appeal from a judgment convicting them of the offence of voluntarily causing hurt to one Kudaduragedara Charlis on the 13th April last at Balagala, and sentencing each to pay a fine of Rs. 20, or in default to one months' rigorous imprisonment. As this appeal is taken on a point of law I entertain it.

It appears that appellants and one Kirihata were charged before the Magistrate on the 15th April with having voluntarily caused grievous hurt to one Charlis and cutting him with a knife, and so committing an offence under the 317th section of the Penal Code.

The Magistrate inquired into the complaint, and at the conclusion of the prosocution he seemed to have advised himself that

1896.
July 6.
WITHERS, J.

there was no case of voluntarily causing grievous hurt with a cutting instrument against any of the parties charged with that offence. He seems to have thought that a case was made out against the appellants and Kirihata of voluntarily causing hurt to complainant Charlis with a knife, and so committing an offence under section 315 of the Penal Code, and he framed charges against them under that section, and called upon them for their defence. Each made a short statement and the Magistrate proceeded at once to pass judgment against them, and it is from this judgment that this appeal has been taken.

The procedure adopted by the Magistrate is wrong, and is calculated to substantially prejudice the accused, and on this account I think the judgment ought to be quashed.

What the Magistrate ought to do in similar cases has been pointed out in the case of *Saram v. Weera* reported in *1 N. L. R. 95*. As soon as the Magistrate found that facts proved against the appellants amounted to an offence triable summarily under chapter XIX., he ought to have stayed the proceedings, framed a fresh charge, and tried the case, giving the appellants notice that they were on their trial, and affording them sufficient time to prepare for their defence. Proceedings under chapter XVI. do not constitute a trial, but only an inquiry.

Again, there should have been an order formally discharging them from the graver offence which had been laid to their charge.