

1895.
May 22
and 23.

ERAKUNATHER v. NAKAN RANTAN *et al.*

P. C., Jaffna, 14,687.

Sentence for unlawful assembly—Binding over to keep the peace—Steps to prevent repetition of offence before punishing accused for committing it—Criminal Procedure Code, s. 87.

The object of chapter VIII. of the Criminal Procedure Code is the prevention and not the punishment of crime, and the attempt to use it as a punishment for a past offence is wrong, and is not sanctioned by law. Where, therefore, a Magistrate found the accused in a case guilty of being members of an unlawful assembly, and without inflicting any of the punishments mentioned in section 140 of the Ceylon Penal Code required them to execute a bond for keeping the peace under section 87 of the Criminal Procedure Code, *held.* that the order was wrong, inasmuch as the Magistrate had no power, until he had punished the accused for the offence already committed, to take steps to prevent its repetition.

THE accused in this case were charged with being members of an unlawful assembly, an offence punishable under section 140 of the Ceylon Penal Code. The Police Magistrate convicted them of that offence, but being of opinion that a fine or imprisonment would not be an adequate punishment required them to execute bonds, under section 87 of the Criminal Procedure Code, to keep the peace for three months.

In appeal, *Senáthi Rája*, for appellant. The latter part of section 87 expressly provides that a convicted person can only be ordered to execute a bond "at the time of passing sentence on such person." In this instance there was no "sentence" passed.

Aserappa, for respondent.

Cur. adv. vult.

28th May, 1895. LAWRIE, J.—

It has been repeatedly pointed out that the object of the 8th chapter of the Criminal Procedure Code is the prevention and not the punishment of crime, and to quote a leading Indian decision, "the attempt to use it as a punishment for a past offence is wrong, and is not sanctioned by law."

Here the Magistrate found the accused guilty of being members of an unlawful assembly, the common object of which was to assault *Suppuhamy*. He did not impose any of the punishments required by the 140th section. Until he had punished for this offence he had no power to add prevention of a repetition.

I must set aside, and remit to the Magistrate to deal with these accused according to law.

The amount of imprisonment or fine need not be great. It may indeed be almost nominal, for the Magistrate has large discretion in the matter.