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GOMIS *v.* AGORIS.

P. C., Galle, 21,570.

Summary trial—Adjournment for further evidence—Conviction of accused on such evidence—Ceylon Penal Code, ss. 223 and 354.

A Police Magistrate has no power to adjourn a summary trial to enable the complainant to make inquiry and find out further evidence against the accused.

So, where a Magistrate having found that the evidence adduced for the prosecution was insufficient to justify the conviction of the accused, adjourned the trial for such further evidence, and after hearing the same convicted the accused thereon, *held*, that the proceeding was illegal, and the conviction could not stand.

THE facts of the case sufficiently appear in the judgment.

Bawa, for appellant.

Jayawardene, for respondent.

19th August, 1896. WITHERS, J.—

A novel and important point was made for the appellant in this case, to which I shall presently make more particular reference.

One Gomis complained to the Magistrate on the 20th July that one Agoris had committed an offence under the 368th section of the Penal Code, in that he had stolen some 4,000 plants, value Rs. 90, on the 2nd and 12th July from the complainant's tea estate called Monrovia, and that one Toronis had received 4,000 of the said plants knowing the same to have been stolen, and thereby committed an offence under the 394th section of the Penal Code.

The written complaint further alleged that 4,500 of the said stolen plants were in the possession of one Balahami, but no charge was laid against this person.

She was, however, brought up before the Magistrate and made a defendant. After examining the complainant and one of his witnesses the woman Balahami was discharged.

Balahami and three other witnesses were examined, after which the Magistrate made the entry and order in his record :

" Complainant has no further evidence ; thinks he may obtain " further information on further inquiry. Postponed to the " 24th instant. Accused admitted to personal bail in Rs. $\frac{100}{100}$."

On the 24th July two new witnesses—I say new witnesses because their names do not appear in the complainant's list of witnesses, nor were they mentioned by any one in the course of the trial up to that date—were examined for the prosecution.

One witness lives hard by Monrovia estate, and the other cultivates the field adjoining it.

Both deposed that about the 12th July, after nightfall, they had actually seen Agoris, in company of another man, actually uprooting tea plants from Monrovia estate.

The accused gave evidence on his own behalf. In the end the Magistrate convicted the appellant Agoris of stealing 4,000 plants on the 12th July.

He did so because he believed the evidence of the two new witnesses called for the prosecution.

In the course of his judgment the Magistrate observes that the case made out by the prosecution at the date of adjournment for further inquiry on the 20th July furnished nothing more than strong suspicion—upon the evidence then before him he says he could not have convicted the accused.

Now comes the point of law. Was it legal for the Magistrate in the circumstances to adjourn the case at the close of the prosecution on the 20th July, "as complainant thought that he "might obtain further information on further inquiry," and could he admit the new evidence and take it into consideration? It was contended for the appellant that this could not be done in the course of a summary trial.

Reliance was placed by the complainant's counsel on section 354 of the Criminal Procedure Code and section 223 of Ordinance No. 22 of 1890.

The first enacts: "If in the absence of a witness, or any other "reasonable cause, it becomes necessary or advisable to postpone "the commencement of or adjourn any inquiry or trial, the Court "may from time to time order a postponement or adjournment "on such terms as it thinks fit, for such time as it considers reason-"able, and may remand the accused if in custody, or take bail "in his own recognizance or with sureties for his appearance."

This was not the case of a witness for the prosecution being absent. Can then the trial be said to have been adjourned for reasonable cause?

To give the complainant an opportunity of finding evidence to make a sufficient *primâ facie* case against a defendant in the course of a summary trial cannot, in my opinion, be said to be a reasonable cause for an adjournment.

It would afford an opportunity to an unscrupulous person to manufacture evidence of the kind required to fix an accused person with guilt.

As well might a Judge adjourn a trial before a jury on the ground that though the prosecution had made out no case against

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the prisoner, yet if the prosecuting counsel was allowed a fortnight for further inquiry, he might be ready with evidence which on the next occasion would furnish a *primâ facie* case against the prisoner.

Section 223 of Ordinance No. 22 of 1890 enacts as follows :—" If " the police magistrate, upon taking the evidence referred to in " section 221, and such further evidence (if any) as he may, of his " own motion cause to be produced, and (if he thinks fit) examining " the accused, finds the accused not guilty, he shall record an order " of acquittal. If he finds the accused guilty, he shall pass sentence " upon him according to law." But this section does not apply to this case. The Magistrate did not of his own motion cause the further evidence to be produced ; and I take it that this section refers to some specific evidence pointed at in the cause of the trial, and not to any possible evidence which may be brought to light by inquiry *de hors* the Court.

Hence, in my opinion, the adjournment of the trial was not only a dangerous, but an illegal course to pursue. It follows therefore that the conviction must be set aside and the appellant acquitted.