

NORMAN v. PERERA.

P. C., Colombo, 65,600.

1900.

July 16.

Mandamus on Police Magistrate—Right of appeal—In what circumstances these remedies are available—Criminal Procedure Code, s. 337.

Under section 337 of the Criminal Procedure Code, two courses are open where a Police Magistrate has refused to issue process: one an application to the Supreme Court for a *mandamus*, and the other an appeal at the instance or with the written sanction of the Attorney-General.

These remedies are not co-extensive, but apply to two different classes of cases.

Mandamus may issue where a Magistrate has refused to exercise jurisdiction; but where he has exercised jurisdiction and decided that he ought not to grant a summons, the proper remedy is an appeal.

H. J. C. Pereira, for complainant, read the following affidavit, and moved the Supreme Court for a rule on the Police Magistrate of Colombo to show cause why a *mandamus* should not issue upon him compelling to proceed with the above-mentioned case against the accused.

The affidavit was as follows:—

I, John Coham Norman, of Colombo, make oath and say—

(1) I am the Manager of the Orient Company, Limited, in Colombo.

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(2) The Fiscal of Colombo, under an order of the District Court of Colombo made in case No. 13,327, placed the Orient Company, Limited, in possession of the house No. 65, Jampettah street, Colombo, on the 23rd June, 1900, and I, as their Manager, placed watchers in charge of the said house, and they remained in possession on the Company's behalf till 25th June, 1900.

(3) As will appear from the evidence of Clement Henry Cannon (one of the said watchers) recorded in Police Court case No. 65,600, a certified copy of which is hereto annexed marked A, three men, Juanis Appu, James Perera, and another, whose name I have not been able to ascertain, entered the said house, which was then in the legal possession of the Orient Company, Limited, with intent to insult and annoy the person in possession of such property, and I am informed assaulted the said Clement Henry Cannon and stole his box.

(4) I charged the said Juanis Appu, James Perera, and another before the Police Magistrate of Colombo on the 12th July, 1900, with criminal house trespass, assault, and theft; but the Magistrate, after recording a small portion of my evidence and that of Clement Henry Cannon, declined to proceed with the case, as will appear from the record in the said Police Court case, and certified copy thereof hereto annexed.

BONSER, C.J.—

This is an application under section 337 of the Criminal Procedure Code, which provides that—“ where a Police Court “ has refused to issue process a *mandamus* shall lie to compel such “ Court to issue such process, but there shall be no appeal against “ such refusal, except at the instance or with the written sanction “ of the Attorney-General.” Here the person applying for a *mandamus* alleges that he complained to the Police Magistrate of Colombo against three persons, that they had committed criminal trespass upon premises in his occupation. The Magistrate examined the complainant and also one of his witnesses, and then declined to issue process, endorsing on the record the words, “ No case. A matter for a civil action. I decline to proceed.” The applicant urges that the Magistrate did not examine him and his witness with that minuteness which he ought to have used, and that if the Magistrate had examined himself and his witness more carefully, he would have come to a different conclusion. I understand him also to say that the Magistrate was wrong on the facts before him, and that he ought to have come to the conclusion that a criminal offence was disclosed and issued process. It

would seem that under section 337 there are two courses which may be taken in a case where the Magistrate refuses to issue process: one is an application to this Court for a *mandamus*, and the other is an appeal "at the instance or with the written sanction of the Attorney-General." The counsel for the applicant says that these remedies are co-extensive, and that in every case the complainant has the choice as to which of these remedies he will select. I am not able to agree with that view. It seems to me that the two remedies are not co-extensive, but that they apply to two different cases. It must be remembered that this remedy by way of *mandamus* to compel a Magistrate to issue process is not a new remedy created by the Criminal Procedure Code of 1898. It existed before the Code. In the Criminal Procedure Code of 1883 there was no reference to this remedy of *mandamus*; but this Court acted upon the powers given to it by section 45 of "The Courts Ordinance, 1889," which provides that it shall have full power and authority to grant and issue according to law mandates in the nature of writs of *mandamus* against any Magistrate. Now, it is well known that, although in civil matters the Roman-Dutch Law is the Common Law of this Island, yet in criminal matters the Law of England has always been adopted by our Courts of Justice as regulating their procedure. And that is expressly recognized by the Criminal Procedure Code of 1898, which provides (section 6) that "as regards matters of Criminal Procedure for which no special provision may have been made by this Code or by any other law for the time being in force in this Island, the law relating to Criminal Procedure for the time being in force in England shall be applied". Now, these writs of *mandamus* are well known in English Criminal Law; and it seems to me that we ought to follow the practice of English Courts as regards the principles on which they ought to be issued. The English rule is that the writ issues in a case where a Magistrate has refused to exercise jurisdiction. But where the Magistrate has exercised jurisdiction and brought his mind to bear upon the case, and decided that he ought not to grant summons, the Court of Queen's Bench will not interfere by way of *mandamus* (see *Ex parte Lewis*, 21 Q. B. D. 191). That distinction was pointed out by my predecessor in this chair in the case reported in 7 S. C. C. 201. In the present case the Magistrate has exercised his discretion, and, after examining the complainant and his witness, has deliberately come to the conclusion that there was no case for a criminal prosecution. If the Magistrate is wrong, the error can be corrected on appeal.

The application is refused.

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BONSER, C.J.