1900.
*June 29.*

## PUNCHIHAMY *v.* SALOHAMY.

*P. C., Tangalla, 14,544.*

*Evidence—Close of case for prosecution—Statement of accused—Irregular procedure—Criminal Procedure Code, s. 296.*

After the case for the prosecution is closed accused persons must either give evidence or keep silence. It is improper to allow them to make statements to which no responsibility attaches, and for which they cannot be punished, if untrue.

AT the close of the case for the prosecution the Police Magistrate recorded as follows:—

"The accused are informed of the difference between giving "evidence in their own defence and making statements. They "elect to make statements.

"Duly warned, first accused makes a statement. Second and "third accused have nothing to add to it."

The accused called only one witness. The Police Magistrate found the accused guilty and sentenced them to one month's imprisonment each and to a fine of Rs. 10.

They appealed.

No appearance in appeal.

1900.
*June 29.*

BONSER, C.J., affirmed the conviction and added:—

I observe that the Magistrate invented a procedure of his own at the trial of this case. On the close of the evidence for the prosecution he records this:—" The accused are informed of the " difference between giving evidence in their own defence and " making statements."

Now there is nothing in the Criminal Procedure Code about accused persons on their trial making statements not upon oath, and now that accused persons can give evidence on their own behalf they must either do that or keep silence. They cannot be allowed to make statements to which no responsibility attaches, and for which they cannot be punished, if untrue. Cases must be decided upon legal evidence. Section 296 of the Criminal Procedure Code shows clearly that such a procedure as was adopted in this particular case is not allowable.