

1900.

January 16.

SARAM *v.* NEINA MARIKAR.

*M. C., Colombo, 3,871.*

*Criminal Procedure Code, ss. 188 and 297—Admission of charge by proctor—Conviction.*

A conviction resting upon an admission of the charge by the accused's proctor is irregular. There is no provision in the Criminal Procedure Code that a proctor may plead for or on behalf of the accused.

THE defendant was charged with a breach of sub-section 2 of section 201 of the Ordinance No. 7 of 1887, in that he erected certain rooms constructed of posts and planks adjoining another house and within 30 feet of Chatham street, without permission in writing from the Chairman of the Municipal Council.

On the 24th November, 1899, Mr. Proctor Aserappa appeared for the defendant and admitted the charge. He applied for time to get a permit from the Council *nunc pro tunc*. The Magistrate granted him time, but on its expiry he, by his proctor, "preferred to pay a fine than obey the law." The Magistrate fined him Rs. 50.

The defendant appealed.

*Dornhrst*, for appellant, referred to sections 188 and 297 of the Criminal Procedure Code and contended that the plea of the accused should not have been tendered by his proctor.

*Sampayo, contra.*

*Cur. adv. vult.*

16th January, 1900. BROWNE, A.J., set aside the order and remitted the case for trial by the following judgment:—

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It is not recorded whether or not appellant was present when on the 24th November (to quote the record) “ Mr. S. L. Aserappa appears for the defendant and admits the charge.”

I find no provision in section 188 of the Criminal Procedure Code that a proctor or pleader may plead for or on behalf of the accused. His powers to represent him in his absence appear to be limited to those given by section 297, and when the Court has specially dispensed with the accused's attendance, which privilege is not stated to have been allowed here. I consider I should not in any way recognize any practice of allowing another than the accused to appear and plead for him.

The procedure was irregular, and the conviction on that plea cannot stand.

