

1900.
January 15
and 16.

TIDORIS *v.* CAROLIS.

P. C., Balapitiya, 19,572.

Criminal Procedure Code, s. 437—Arrest of accused without sufficient ground—Compensation to accused—Right of complainant to show cause—Appealable order.

An order awarding compensation to accused under section 437 of the Criminal Procedure Code, on the ground of his arrest without sufficient ground, is appealable.

Before making an order as to compensation it is the duty of the Court to give complainant an opportunity to show cause against it.

A complainant cannot be said to have no foundation for arresting accused, if the Magistrate, after hearing the case for the prosecution, hears evidence for the defence and dismisses the charge only on the improbabilities of the case.

THE constable arachchi of Madampe reported to the Police Magistrate of Balapitiya that Gooneratne Tidoris the gate-keeper of Madampe, gave him the information that on the 24th

“ October, 1899, D. Karolis and another broke the window of the watch-house of the gate, entered into the house, and when they were going away with the property, we went to seize them, they attempted to assault me and run away.” He also reported to the Court that on inquiry made on the spot he “ found this crime was committed by the accused.”

The Magistrate ordered “ the complainant ” to be cited, together with his witnesses. Summons being served on G. Tidoris, he was examined, as also other persons, and the Magistrate, in discharging the accused, recorded as follows:—

“ Accused has been arrested at his estate and been brought to the Court at the instance of the complainant. I find there was no ground for his arrest. I order him to pay accused Rs. 25 as compensation, under section 437 of the Criminal Procedure Code.”

Tidoris appealed.

Allan Drieberg, fc appellant.—Appellant did not institute this case against the accused, but only informed the constable arachchi of the theft, and the proceedings in Court followed at the instance of the appellant. There is nothing to show that the complaint was false or frivolous. No appearance for respondent.

Cur. adv. vult.

16th January, 1900. BROWNE, A. P. J.—

I have no note of any appeal decision upon any order made under the novel section 437 of the Criminal Procedure Code.

In this case the Magistrate inquired into what apparently was a non-summary complaint of offences against section 434 or 437 of the Penal Code, and, after hearing evidence on both sides, discharged the accused, because he held there were certain improbabilities in the story for the prosecution. He then held, “ I find there was no ground for the arrest,” and ordered the complainant to pay accused Rs. 25 as compensation under section 437. When complainant appealed, the Magistrate in forwarding the appeal petition submitted that there was no appeal, inasmuch as there was no matter of law disclosed.

The compensation awarded, however, was not a sentence of fine or imprisonment, and the order awarding it is therefore an appealable one. The principles laid down in 7 S. C. C. 200 apply.

I must set aside this order, because in my judgment, even though there is not included in section 437 a clause analogous to that of 197 (3), yet it must be held that a complainant should be given opportunity to show cause against the making of the order ere it be pronounced, just as when that clause was not enacted in section 236 of the old Civil Procedure Code it was held in

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BROWNE,
A.P.J.

3 N. L. R. 3 that the opportunity should be given, which ruling apparently originated the clause (3) in the new section 197.

Moreover, when the Magistrate has not disbelieved the charge and evidence supporting it absolutely, but in the first instance proceeded to record evidence for the defence, and finally rested his dismissal only on improbabilities, I do not concur in his view that there was absolutely established no sufficient ground for causing the arrest.

