VENGADASALEM CHETTY *v.* MOHIDEEN PITCHE.

1900.
November 2.

P. C., Colombo, 65,918.

Criminal Procedure Code, s. 152 (3)—Summary trial of indictable cases—Scope of s. 152 (3).

A Police Magistrate, who is also Additional District Judge, must not assume that cases usually triable upon indictment may properly be tried by him summarily, when a District Judge is available at the station to try the case.

THIS was a case of theft of twenty bags of rice which came before the Police Magistrate of Colombo. He, being also Additional District Judge, was of opinion that it could properly be tried summarily. He heard evidence and acquitted the second accused, but found the first and third guilty.

The third accused appealed.

Bawa, for appellant.

1900.
November 2.

The Chief Justice, after reviewing the facts of the case, came to the conclusion that the appellant was entitled to be acquitted. In the course of his judgment he made the following observations on the summary trial which had taken place:—

2nd November, 1900. BONSER, C.J.—

For some reason or other, which does not appear, the Police Magistrate of Colombo, who is also Additional District Judge, was of opinion that this was a case which could properly be tried summarily. I agree with what was said by my brother Lawrie in *Sinnatamby v. Mendis Appu** on the readiness with which Police Magistrates, who are also District Judges, *assume* that cases may properly be tried summarily.

It is well known why section 152 (3) was inserted in the Code. At a great many outstations there is only one Judicial Officer, who is not only the Police Magistrate but the District Judge also, and great inconvenience arose from the fact that every case, however simple, which was not within the jurisdiction of the Police Magistrate to try, had to be tried before some District Judge brought down from some other Court and appointed specially to try it. To obviate this difficulty the Code provides for the Police Magistrate trying summarily cases which he thinks may properly be tried.

That provision was not made to apply to a case where a District Judge was available to try the case, although the words of the section would cover such a case. My brother Lawrie pointed out the disadvantages of a summary trial where the accused has not the benefit of a full investigation by the committing Magistrate, followed by a further consideration of his case by the Attorney-General. There is also the disadvantage that the case is tried without assessors.

---

* The following is the judgment of Mr. Justice Lawrie, delivered on 27th March, 1899:—

After the examination of the complainant the Police Magistrate informed the accused that they were on their trial before the District Court. It is surely not too much to expect that the Magistrate should follow the procedure laid down in Ordinance No. 8 of 1896 and in section 152 of the new Code, that is, record his opinion that the offence may properly be tried summarily, and then to begin as from the beginning of a Police Court case, following the procedure in chapter XVIII. of the new Code. It must be borne in mind that the question before the Police Magistrate is not whether the accused *can* be tried before a District Court (the schedule of the Code settles that), but whether the offence can *properly* be tried summarily. It seems to me that Magistrates, who are also District Judges, are too apt to conclude that any District Court case may properly be tried summarily, forgetting the advantage to the accused, if not to the complainant, of an investigation under chapter XVI. and a reference to the Attorney-General for advice and sanction.