

## JONKLAAS v. SILVA.

P. C., Kalutara, 4,603.

1904.

February 17.

*Criminal Procedure Code, s. 190—Examination of witnesses at trial of case—Powers of Magistrates having joint jurisdiction to hear case—Regularity of procedure.*

Where one Police Magistrate of a Court began a trial, and, being disqualified by interest, another Magistrate, having joint powers with him, recalled the witnesses already examined, read the evidence given by one of them and cross-examined him, and after the case for the prosecution had been closed called a witness to support the case for the prosecution,—

*Held*, that such procedure was not irregular.

THE accused, being convicted of illicitly cutting and dishonestly removing timber from Crown land and sentenced to a fine of Rs. 100, appealed to the Supreme Court.

*Van Langenberg*, for appellant.—Mr. W. F. de Saram, who convicted the accused, should not have considered the evidence of Mr. Koelman and Mr. Orr, which had been taken by Mr. Kindersley. After this evidence had been taken, Mr. Kindersley found that, as Assistant Government Agent, he had ordered the prosecution, and therefore he referred the case to Mr. De Saram, the Itinerating Police Magistrate, who recalled these witnesses. He examined Koelman only, but not Jonklass. At the same time he received their evidence taken by Mr. Kindersley. This was irregular and fatal to the prosecution. *Appuhamy v. Undia* (J. C. L. R. 14); The Courts Ordinance, section 89; *Gomis v. Agoris* (2 N. L. R. 180). Counsel argued on the facts also.

*Rāmanāthan, S.-G.*, for respondent.—The accused has not been prejudiced. The cases cited do not apply. The procedure objected to is not illegal.

17th February, 1904. WENDT, J.—

Mr. Kindersley, the resident Police Magistrate of Kalutara, commenced the trial of the appellant on 21st December, 1903, and examined the complainant (Mr. Jonklaas) and Mr. Koelman. Before the latter was cross-examined it was discovered that Mr. Kindersley, as Assistant Government Agent, had directed the prosecution, and he therefore declined to proceed further with the trial. He sent the case before the Itinerating Police Magistrate, Mr. De Saram, who on the same day commenced the trial afresh. Mr. Koelman was examined anew and cross-examined.

1904. Mr. Jonklaas was then called and his evidence already recorded  
*February 17* was read, after which he was cross-examined. It was objected by  
 WENDT, J. appellant, on the authority of *Appuhamy v. Undia* (1 C. L. R. 14),  
 that Mr. De Saram had no jurisdiction to take the case out of  
 Mr. Kindersley's hands, but the cases are distinguishable.  
 In the case cited, the former Magistrate (Mr. Cooke) was  
 competent to proceed with and complete the trial, Mr. Kindersley  
 was disqualified by interest. Again, Mr. De Saram has joint  
 powers with Mr. Kindersley (both being Magistrates of the Police  
 Court of Kalutara), which Mr. Cooke and Mr. Molamure had not  
 (see judgment of Clarence, J). The objection therefore fails.

So also does the objection to the Magistrate's having, after the  
 close of the prosecution, called a witness, viz., the headman.  
 This he was entitled to do under section 190 of the Criminal  
 Procedure Code, and the case is entirely different from that relied  
 on by accused's proctor, viz., *Gomis v. Agoris* (2 N. L. R. 180).

On the merits, I think the conviction is sustained by the evidence.  
 The appeal is therefore dismissed.

