

Present : Schneider J.

1922.

## KALINGUHAMY v. POROLIS APPU.

236—P. C. Ratnapura, 20,200.

*Criminal Procedure Code, ss. 152 and 149—Magistrate also District Judge—Not complying with the provisions of section 149—Is irregularity fatal?*

Before a Magistrate, who is also a District Judge, exercises his powers under section 152 (3), he should comply with the provisions of section 149. The omission to comply with provisions of section 149 is not fatal, but is an irregularity which comes within the provisions of section 425.

**T**HE facts appear from the judgment.

*H. J. C. Pereira, K.C. (with him R. L. Pereira), for appellant.*

*E. W. Jayawardene, for respondent.*

June 9, 1922. SCHNEIDER J.—

The only question I need address myself to is whether the failure of the learned Magistrate to comply strictly with the provisions of section 152 (3) of the Criminal Procedure Code was one fatal to the conviction. The first omission consisted in not complying with the provisions of section 149 (1) of the Criminal Procedure Code, which directs that in a case of this nature he should forthwith examine on oath the complainant or informant. It is undoubtedly the intention of the Code that before a Magistrate, who is also a District Judge, exercises his powers under section 152 (3), he should comply with the provisions of section 149. In two cases (*Heyzer v. James Silva*<sup>1</sup> and *Mohamado v. Aponso*<sup>2</sup>), this Court had regarded such an omission as fatal to the conviction, but these two cases were considered in 1918 in the case of *Abanchihamy v. Peter*,<sup>3</sup> where it was held by a Court of two Judges that the omission to comply with the provisions of section 149 is not fatal, but is an irregularity coming within the provisions of section 425 of the Criminal Procedure Code. The learned Magistrate who tried this case has taken great pains with the trial, has held an exhaustive inquiry, has appreciated the evidence put before him, and I have no doubt arrived at a correct verdict. In these circumstances, I do not think the omission to strictly comply with the provisions of section 152 (3) is a fatal irregularity. It is an irregularity which has not occasioned any miscarriage of justice.

The appeal is dismissed.

*Appeal dismissed.*

<sup>1</sup> (1915) 1 C. W. R. 136.

<sup>2</sup> (1915) 1 C. W. R. 170.

<sup>3</sup> (1918) 24 N. L. R. 15; 5 C. W. R. 55.