

1922.

Present: Schneider J.

FARQUHARSON v. PITCHHEY.

242—P. C. Colombo, 21,718.

*Leave to appeal on facts—When to be granted by Magistrate.*

A Magistrate is not to grant leave to appeal on facts where no appeal lies on facts, unless he has some doubt.

*Amarasekere*, for appellant.

May 31, 1922. SCHNEIDER J.—

It is made a matter of complaint on this appeal that the accused had not been given an opportunity of calling witnesses to prove his defence, that he had been taken into custody by the police about 8 A.M. and tried by 11 A.M., so that he had no opportunity of engaging the services of a lawyer. There is a record by the Magistrate that the accused, after he had given evidence, said that the tindal would give evidence on his behalf. I think, the accused having been undefended, it was the duty of the Court to have expressly questioned him as to the fact whether he was prepared to go to trial, and whether he desired to call any evidence for the defence. The record does not show that the Magistrate had not given the accused an opportunity of calling witnesses. Taking the allegations made in the petition of appeal, and the fact that the accused was put on his trial very shortly after he had been taken into custody by the police, I would set aside the conviction *pro formâ*, and remit the record, in order that the accused may call any evidence he desires to call to prove his defence.

I wish to add one word of comment upon the proceedings in this case. The accused having been sentenced to undergo imprisonment for one month had no right of appeal, except upon a matter of law or with the leave of the Magistrate. There is no matter of law which seems to arise upon these proceedings, but the appeal was taken with the leave of the Magistrate. Now there is nothing on the record to show why the Magistrate granted this leave. It is not a mere matter of routine the granting of leave, but there must be some reason moving the Magistrate in granting it. His own judgment contains no indication whatever of any doubt in his mind as to the facts which he considered had been proved. If he had no such doubt, then I fail to see what reason it was that induced him to grant leave to appeal. I make these remarks because it seems to me that Magistrate in granting leave to appeal should proceed upon some principle.

*Sent back.*