

1932

Present : Macdonell C.J.

FERNANDO v. FERNANDO.

P. C. Colombo, 31,901.

*Appeal—Order of discharge in non-summary proceedings—Criminal Procedure Code, s. 157.*

There is no appeal from an order of discharge made by a Police Magistrate under section 157 of the Criminal Procedure Code.

**A** PPEAL from an order of the Police Magistrate of Colombo.

L. A. Rajapakse, for complainant-appellant.

N. E. Weerasooria, for accused-respondent.

August 25, 1932. MACDONELL C.J.—

I am of opinion that this clearly was a discharge under section 157 of the Criminal Procedure Code, and, if that is so, there is a decision directly in point by my brother Dalton J. in 1 *Ceylon Law Weekly* 231. Even if I were at liberty to depart from that decision, I would certainly not do so because, with all respect, I think it is correct. The reason why an appeal will not lie in such a case as this, namely, where a non-summary inquiry has been started, followed by the discharge of the accused under the provisions of Chapter XVI. of the Criminal Procedure Code, is because the accused has never been put to his plea and because, as section 157 (2) says, a discharge after an inquiry under section 157 does not bar a further prosecution for the same offence. But, apart from that, section 338, which gives the right of appeal against judgments and final orders in criminal cases in a Police Court, expressly states that a discharge under section 157 is not a judgment or final order. Even if this were a discharge under section 156, I cannot help thinking that exactly the same considerations would apply. The accused has never been *in periculo*, nothing has finally been decided, and therefore there is nothing which can be made the subject of an appeal.

I agree that this appeal will not lie and therefore must be dismissed.

*Appeal dismissed.*

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