

Present : Bertram C.J.

1920.

Application *re* Appeal in P. C. Hambantota 4,342.

Appeal—Magistrate has no right to refrain from sending appeal to Supreme Court.

A Magistrate to whom a petition of appeal is tendered is not entitled to refrain from transmitting it to the Supreme Court on the ground that it is a case in which no appeal lies.

A. St. V. Jayawardene (with him *J. S. Jayawardene* and *H. V. Perera*), for the applicant.

September 6, 1920. BERTRAM C.J.—

The only point I have to decide at this stage of the case is whether the Magistrate to whom a petition of appeal was tendered in this case was entitled to refrain from transmitting it in accordance with the provisions of section 342 of the Criminal Procedure Code, on the ground that this was a case in which no appeal lay, being a refusal to issue process (see section 337). In a previous case—*Fernando v. Costa*¹—I mentioned that this was a point which some day would come up for formal decision. I am unable to see what justification the Magistrate has in withholding from the Supreme Court a petition which is addressed to the Supreme Court. There is no provision in chapter XXX, entitling him to reject such a petition. It is for the Court of Appeal to decide whether an appeal lies to it or not. An order will issue to the Magistrate to transmit the petition of appeal in accordance with section 342.

¹ (1918) 5 O. W. R. 224.