

1942

Present: Wijeyewardene J.
DE SILVA v. DALPATADU.

776—M. C. Panadure, 8,671.

Jurisdiction—Failure to transmit duplicates of deeds—Power of Magistrate to try offence under Notaries Ordinance summarily as District Judge—Reason inadequate—Criminal Procedure Code, s. 152 (3).

A Magistrate is not justified in trying summarily under section 152 (3) of the Criminal Procedure Code an offence under rule 25 of section 30 of the Notaries Ordinance merely because the offence is punishable with a fine of two hundred rupees.

¹ 28 N. L. R. 212.

² 30 N. L. R. 449.

A PPEAL from a conviction by the Magistrate of Panadure.

No appearance for the appellant.

D. Jansze, C.C., for the respondent.

January 16, 1942. WIJEYEWARDENE J.—

The accused was charged with having failed to transmit to the Registrar of Lands before April 15, 1940, duplicates of deeds attested by him in March, 1940, in breach of rule 25 of section 30 of the Notaries Ordinance (*Legislative Enactments, Volume III., Chapter 91*).

The Magistrate who is also a District Judge proceeded to try the case under section 152 (3) of the Criminal Procedure Code and convicted the accused.

The accused has appealed against the conviction and has raised *inter alia* the following points of appeal:—

- (1) The offence is not triable by the Magistrate's Court or the District Court.
- (2) That the offence is not one which "may properly be tried summarily" under section 152 (3) of the Criminal Procedure Code.

Section 30 of the Notaries Ordinance, which renders a person guilty of a breach of rule 25 liable to a fine not exceeding Rs. 200, does not mention the Court which should try such a person. Such a person could not therefore be tried in a Magistrate's Court in view of section 11 (b) of the Criminal Procedure Code but in the District Court or Supreme Court. The Magistrate was therefore right in holding that this was a case triable by a District Court. Unfortunately, the only reason he has given for deciding to try the case under section 152 (3) is "that the punishment to which the accused is liable is Rs. 200". If this is a good reason, it would automatically enable Magistrates to try persons charged with offences punishable with a fine not exceeding Rs. 200, even if the case is of a complicated nature. I am unable to accept the reason given by the Magistrate as a good reason.

This Court has held in a number of cases (*vide Sheddou v. Ago Singho*¹ and *Silva v. Kelanitissa*²) that a Magistrate should record his reasons for forming the opinion that the offence may be tried by him under section 152 (3) of the Criminal Procedure Code and that the opinion so recorded was subject to review by this Court.

I am compelled to set aside the conviction and remit the case to the Magistrate, directing him to take non-summary proceedings against the accused.

*Set aside,
Case remitted.*

¹ 14 C.L.R. 43

² 37 N. L. R. 68