

1948

Present : Dias J.

PERERA, Petitioner, and MENDIS *et al.*, Respondents.

S. C. 6—Application for revision in M. C. Balapitiya, 58,900.

Criminal Procedure—Compoundable offence compounded—Duty of Magistrate—Orders appropriate in civil action.

Where a compoundable offence is compounded the accused must be discharged. A Magistrate has no jurisdiction in such a case to make orders which are appropriate in a civil action.

APPPLICATION in revision in respect of a judgment of the Magistrate of Balapitiya.

A. C. Nadarajah, for complainant, petitioner.

K. C. de Silva, for accused, respondents.

February 5, 1948. DIAS J.—

This case is teeming with irregularities. The Police filed a plaint against the accused under section 148 (1) (b), charging the accused with committing criminal trespass on the land of the injured party, who is the petitioner and with committing mischief by cutting down a fence and of theft of some breadfruits. The first two offences are compoundable. The last is not. Compounding an offence does not mean that it entitles a Magistrate to turn a criminal proceeding into a civil proceeding by issuing commissions to surveyors and entering agreements on the record. When a case is compounded parties inform the Magistrate that the case is compounded and the accused is then set free. That is all that the Magistrate has to do.

In this case it was the Police who were the complainants and as I pointed out in a recent judgment from the Magistrate's Court of Dandagamuwa¹, I am by no means satisfied that it is open to the aggrieved party to displace the person who is the complainant and who will have to appeal in the event of the accused being acquitted. Nevertheless this criminal prosecution was turned into a civil proceeding with the unholy assistance of the Magistrate with the result that various orders more appropriate in a civil action were made. Certain conditions were laid down which it is said the accused did not fulfil, and finally on an undertaking by the accused's counsel, the Magistrate discharged the accused. I am not going to perpetuate these irregularities by making any order in this case. The Magistrate, the accused and counsel are equally responsible for the mess in which the proceedings are. The application should be dismissed and the petitioner should be referred to his civil remedy.

Application dismissed.

¹ (1948) 49 N. L. R. 108.