

1916.

[IN REVISION.]

Present: Shaw A.C.J.THE KING *v.* PERERA.*D. C. (Crim.) Kegalla, 1,876.**Courts Ordinance, s. 78—Objection to jurisdiction not taken by accused when pleading to the indictment—May objection be taken later.*

The accused was charged with having, at Batuwatta, in the District of Kegalla, committed criminal intimidation by sending an anonymous letter threatening the death of a man. When the case came before the District Judge, before whom he had been committed, under instructions from the Attorney-General, by the Police Magistrate of Kegalla, the accused pleaded not guilty, but did not object to the jurisdiction. It was discovered at the trial that the letter bore the postmark of Polgahawela, which is outside the territorial jurisdiction of the Police Court and District Court of Kegalla. The District Judge thereupon discharged the accused, holding that the postmark showed that the offence was committed outside the jurisdiction of the committing Police Court.

Held, that the fact that the accused had not taken any objection to the jurisdiction when he pleaded to the charge could not prevent the accused from taking objection to the jurisdiction in the circumstances of this case.

The Supreme Court held that the order of discharge was wrong, as it was competent to the prosecution to prove that the letter was written at Batuwatta, although it was posted at Polgahawela.

THE facts appear from the judgment.

Dias, C.C., in support.

E. W. Jayawardene, contra.

September 26, 1916. SHAW A.C.J.—

The accused was charged with having on January 24, 1915, at Batuwatta, in the District of Kegalla, committed criminal intimidation by sending an anonymous letter threatening the death of a man. When the accused came before the District Judge, before whom he had been committed, under instructions from the Attorney-General, by the Police Magistrate of Kegalla, the accused pleaded not guilty, and evidence was entered upon. When the letter was put in and brought to the attention of the Judge, it was discovered that the letter bore the postmark of Polgahawela as the place of

posting. Polgahawela is without the territorial jurisdiction of the Police Magistrate of Kegalla, and outside the jurisdiction of the District Court of Kegalla. The District Judge thereupon discharged the accused, holding that the postmark showed that the offence was committed outside the jurisdiction of the committing Police Court, and, therefore, the Police Court had no authority to hold the preliminary inquiry, which was, therefore, void, the commitment of him was also void. I think the District Judge was clearly wrong. The indictment did not charge an offence at Polgahawela. It had charged with an offence committed at Batuwatta, and Batuwatta is within the territorial jurisdiction both of the Police Court and the District Court of Kegalla, and if the prosecution proceeded with their evidence and satisfied the Judge that the letter was written at Batuwatta, although it may have been posted at Polgahawela, there was an offence within the jurisdiction of the Police Court and the District Court, which the Magistrate and the District Judge were competent to deal with. Another objection was taken to the ruling of the District Judge, namely, that the accused, having pleaded in the District Court, could not afterwards take objection to the jurisdiction in consequence of the provisions of section 73 of the Courts Ordinance. I think that this contention is not sound in the present case. The Criminal Procedure Code by section 12 provides that no District Court shall take cognizance of any offence, unless the accused person has been committed for trial by a Police Court duly empowered in that behalf, or unless the case has been transferred to it from some other Court for trial by order of the Supreme Court. Here, if it were the fact that the letter was never written or posted in the Kegalla District, the Kegalla Police Court would have had no jurisdiction to hold the preliminary inquiry, and no proper preliminary inquiry such as is provided for by the law would have been held before the committal to the District Court. I do not think that section 73 can be read as giving a District Court the power to try a case in which the preliminary inquiry has been held without any jurisdiction by a Police Magistrate. It could not possibly be urged with success that if a Police Magistrate committed an accused for an offence that had been committed in England, the mere fact of his being committed to a District Court here to give that District Court jurisdiction, or that the Supreme Court would not upset any conviction made by a District Court, although a plea to the jurisdiction had not been taken at the time the accused pleaded. The case I put is an extreme one, but the principle appears to me to be the same. I would set aside the order of the District Court discharging the accused, and remit the case to the District Court to be proceeded with upon the indictment against the accused in the case.

1916.

SHAW A.C.J.

*The King
v. Perera**Set aside.*