Present: De Sampayo A.J.

1914.

ARNIS *v.* CHARLES *et al.*

710—P. C. Negombo, 21,653.

Non-summary proceedings—Magistrate must give the accused notice of his intention to try them summarily.

Proceedings in this case commenced by the Magistrate taking non-summary proceedings, but after the medical officer deposed to the injuries being non-grievous, the Magistrate framed charges against the accused under sections 314 and 315 of the Penal Code, and took their pleas. The witnesses previously called were then cross-examined, and evidence for the defence was also heard, and the accused were convicted.

Held, that the proceedings were irregular. *Daniel v. Romanis* [1] commented upon.

THE facts appear from the judgment.

Elliott, for first accused, appellant.

A. L. R. Aserappa, for complainant, respondent.

Cur. adv. vult.

August 25, 1914. DE SAMPAYO A.J.—

The proceedings in this case are embarrassing, if not wholly irregular. Three persons were charged under sections 314 and 315 of the Penal Code with causing hurt to the complainant, and after the examination of a police constable the Magistrate recorded his intention to take non-summary proceedings, which were taken accordingly. A certain number of witnesses were examined for the prosecution, their cross-examination being for some reason or other

[1] *4 S. C. D. 61.*

1914.

DE SAMPAYO A.J.

Armis v. Charles

deferred. But after the medical officer had been examined and had deposed to the injuries on the complainant being non-grievous, the Magistrate framed charges against the accused under sections 314 and 315 of the Penal Code, and their pleas were taken. The witnesses previously called were then cross-examined, evidence for the defence was also heard, and in the result the accused were convicted. The Magistrate made no record that he was converting the non-summary proceedings into a summary trial, nor were the accused at any time informed of such an intention. In *Saram v. Meera* [1] and *Charles v. Charles* [2] it was decided that where in the course of non-summary proceedings the Magistrate should find that facts proved amounted to an offence triable by him summarily, the proper course was to stay proceedings as a non-summary inquiry, frame a fresh charge, and give notice to the accused that he was now on his trial. In *Charles v. Charles* [2] it was even held that the accused should be formally discharged before the summary proceedings commence. Referring to these decisions, Wood Renton J., in *Daniel v. Romanis* [3], observed that they were given prior to the Criminal Procedure Code of 1898, and considered that in view of section 172 of that Code they were no longer applicable. With deference I am unable to take the same view. Section 172 in question merely authorizes a Court to alter any charge at any time before judgment is pronounced, but requires such alteration to be read and explained to the accused; and exactly similar provisions were contained in section 201 of the old Criminal Procedure Code of 1883, so that the authority of the above decisions is not affected by the enactment of the new Criminal Procedure Code. Moreover, the present is not a case of alteration of charges, as was the case in *Daniel v. Romanis* [3]; the charges remain identically the same, but the nature of the proceedings is wholly altered, and of this, I think the accused were entitled, *ex debito justitiæ*, to have distinct notice. I think the proceedings in this case materially prejudiced the accused, and the conviction of the first accused-appellant ought not on that ground to be sustained.

I think also the first accused-appellant is entitled to succeed on the merits.

Acquitted.

[1] *1 N. L. R. 95.* [2] *2 N. L. R. 187.*

[3] *4 S. C. D. 61.*