

1932

Present : Garvin S.P.J.

PILLAI *v.* DEWANARAYANE *et al.*

317—P. C. Panadure, 14,083.

Appeal—Refusal to issue process—Sanction to appeal—Mandamus—Criminal Procedure Code, s. 337.

Under section 337 of the Criminal Procedure Code an appeal lies where the Court has assumed jurisdiction and made order refusing process. The right of appeal is subject to the sanction of the Attorney-General.

A mandamus lies where the Court has refused to exercise jurisdiction.

A PPEAL from an order of the Police Magistrate of Panadure.

Ranawake, for the complainant-appellant.

Rajapakse (with him *J. R. Jayawardene*), for accused-respondent.

November 16, 1932. GARVIN S.P.J.—

This appeal must clearly be dismissed.

This is an appeal from an order refusing to issue process, and that order was made after the Police Magistrate had examined the complainant at considerable length and after considering that evidence had decided that it was not a case in which he should issue process. The procedure to be followed in cases in which process is refused is that which is laid down in section 337 of the Criminal Procedure Code. That section has been interpreted in the case of *Norman v. Perera*¹, where Bonser C.J., in a judgment, which has not to my knowledge ever been dissented from and which has on the contrary been consistently followed, indicated that the remedies of mandamus and appeal provided by section 337 are not co-extensive; that a mandamus lies where a Court has refused to exercise jurisdiction, and that an appeal lies where the Court has assumed jurisdiction and thereafter made its order refusing process. But the right of appeal is subject to the condition that it is sanctioned by the Attorney-General. This appeal has not received the sanction of the Attorney-General, and the objection taken to it by counsel for the respondent must therefore be sustained.

As to the papers filed in support of a prayer for mandamus, the reasons I have given will explain my refusal to entertain it. This is not a case in which the Police Magistrate has refused to exercise jurisdiction.

Appeal dismissed.

¹ 4 N. L. R., p. 85.