

July 26, 1911

Present : Wood Renton J.

THE ATTORNEY-GENERAL v. CORNELIS.

372—P. C. Panadure, 35,657.

Village Tribunal—Appeal to Assistant Government Agent—Power of Assistant Government Agent to order new trial before Police Court.

In a criminal case there was an appeal from the Gansabhawa to the Assistant Government Agent, who directed that there should be a new trial in the Police Court. The Magistrate held that the Assistant Government Agent's order was *ultra vires*, and that he could only order a new trial in the Gansabhawa.

Held, that the Assistant Government Agent had jurisdiction to make the order.

When the Assistant Government Agent ordered a new trial, the case was restored to the roll of the Village Tribunal. Section 28, proviso 3, thereupon became applicable, and enabled the Assistant Government Agent to stop the further hearing of the case before the Village Tribunal and to direct it to be tried before the Police Court.

THE facts appear sufficiently from the judgment.

Obeyesekere, C.C., for the appellant.—Section 52 of Ordinance No. 24 of 1889 empowers the Government Agent in any Village Tribunal case in which either party applies for relief to order a new trial. In the present instance the Government Agent ordered a new trial of Village Tribunal case 4,018 on the application of the complainant. The case was thus restored to the roll of the Village Tribunal. Section 28 (3) empowers the Government Agent to stop further hearing of any case before a Village Tribunal, and to direct it to be tried by the Police Court. The Government Agent, having under section 52 restored the Village Tribunal case 4,018 to the roll, was at once empowered under section 28 (3) to stop further hearing of that case in the Village Tribunal, and direct it to be tried by the Police Court.

July 26, 1911. WOOD RENTON J.—

This is an appeal by the Attorney-General against the acquittal of the accused-respondent, on a charge of theft of coconuts, by the learned Police Magistrate of Panadure. The case had been originally tried in the Gansabhawa. There was an appeal to the Assistant Government Agent, and in terms of section 52 of the Village Communities Ordinance, No. 24 of 1889, he directed that there should

be a new trial in the Police Court of Panadure. The learned Police Magistrate held that the Assistant Government Agent's order was *ultra vires*, and that he could only order a new trial in the Gansabhawa under section 52. It appears to me that the view which the Police Magistrate has taken of the law applicable to this case is wrong. When the Assistant Government Agent ordered a new trial, the case was, in effect, restored to the roll of the Village Tribunal. Section 28, proviso 3, thereupon became applicable, and enabled the Assistant Government Agent to stop the further hearing of the case before the Village Tribunal, and to direct it to be tried in the Police Court. I set aside the acquittal, and send the case back for trial in the Police Court of Panadure.

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Appeal allowed.
