Present: Garvin J.

1926.

SUB-INSPECTOR. PADUKKA, *v.* PERERA.

106—P. C. Avissawella, 12,636.

Charge—Reading the charge from the report—Offence punishable with Rs. 100 for second offence—Criminal Procedure Code, ss. 148 (1) (b) and 187.

Where a person is charged with an offence which is punishable in certain circumstances with a fine not exceeding Rs. 100 it is not competent to a Magistrate, in lieu of framing a charge, to adopt the alternative course of reading the report as a charge under section 148 (1) (*b*).

APPEAL from a conviction by the Police Magistrate of Avissawella. Accused was charged with having committed an offence against the provisions of sections 27 (1) and 32 of the Motor By-laws, an offence punishable with a fine not exceeding Rs. 50, and in the case of a second or subsequent offence with a fine not exceeding Rs. 100. The proceedings commenced with a report from the Sub-Inspector of Police. The accused appeared in Court on the summons returnable date, but there was no return to the summons. The Magistrate read the report to the accused and took his plea.

Basnayake, for accused, appellant.

December 9, 1926. GARVIN J.—

In this case the proceedings started with a report by the Sub-Inspector of Police under the provisions of section 148 (1) (*b*) of the Criminal Procedure Code. It was alleged that the accused had committed an offence against the provisions of sections 32 and 27 (1) of the Motor By-laws. Summons was issued. The accused appeared in Court on the summons returnable date, but there was no return to the summons. The Police Magistrate read the report upon which these proceedings were initiated to the accused and took his plea thereon. It is contended for the appellant that the ommission on the part of the Police Magistrate to frame a charge is fatal to this conviction. The provisions of section 187 of the Criminal Procedure Code enact that where an accused appears in Court in cases instituted on a written report under section 148 (1) (*b*), which discloses an offence punishable with not more than three months' imprisonment or a fine of Rs. 50, it shall be lawful to the Magistrate to read such charge to the accused from the report. The punishment for an offence against the by-laws framed under

1926.

GARVIN J.

Sub-Inspector, Padukka v. Perera

Ordinance No. 4 of 1916 is prescribed by section 34 of these by-laws. Every person committing a breach of these by-laws is liable to a fine not exceeding Rs. 50, but in the case of a second or subsequent offence he renders himself liable to be punished with a fine not exceeding Rs. 100. It is argued that in these circumstances it is not possible to say that the offences which the accused committed are offences which are punishable "with not more than a fine of Rs. 50." This contention is entitled to prevail. There are two maxima up to which a person charged with an offence under these by-laws may be punished according as it is the first or second or subsequent offence. In each case the offence is an offence against the by-laws, and it is that offence which is punishable in certain circumstances with a fine up to a maximum of Rs. 100. It is obvious that at the time of the institution of the charge the Magistrate does not, and cannot, know whether it is a first or a second offence, but what he does know is that is is an offence in respect of which the punishment which he is empowered to inflict may extend to a fine of Rs. 100 if in point of fact it so happens that the person charged had been previously convicted of an offence against these by-laws. This is not, therefore, a case in which it was competent for the Police Magistrate in lieu of framing a charge to adopt the alternative course of reading the report made under section 148 (1) (*b*). It has been held in *Ebert v. Perera* [1] that a conviction obtained in circumstances such as this cannot stand.

I would therefore quash the conviction and send the case back for further proceedings.

I wish to draw the attention of the Magistrate to the evidence led in the case to identify the accused as the person who drove the car on the day in question. Without expressing any opinion as to the sufficiency of the evidence, I would merely observe that it is extremely scanty and should, if possible, be supplemented.

Set aside and sent back.

[1] *23 N. L. R. 362.*