

Present : Lascelles C.J.

Sept. 7, 1911

THE ATTORNEY-GENERAL v. WILLIAM.

536—*P. C. Galle*, 1,106.

Order by Magistrate referring parties to Village Tribunal—Magistrate should not discharge accused—Government Agent has power to re-transfer a case from Village Tribunal to Police Court—Ordinance No. 24 of 1889, ss. 28 and 34—Criminal Procedure Code, s. 191.

A Magistrate who refers the trial of a case to a Village Tribunal should not discharge the accused under section 191 of the Criminal Procedure Code.

A Government Agent has the power to order a re-transfer of the case to the Police Court.

THE accused in this case was originally charged before the Police Court with keeping a common gaming place under section 5 of Ordinance No. 17 of 1889. The Magistrate referred the parties

¹ (1907) 3 *Bal.* 236.

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to the Village Tribunal, and discharged the accused under section 191 of the Criminal Procedure Code. After proceedings had been instituted in the Village Tribunal the Government Agent directed the trial of the offence by the Police Court. The Magistrate held that the discharge under section 191 was a bar to his re-opening the case (*Eliatamby v. Sinnatamby*¹), and that the Government Agent had no power to re-transfer the case to the Police Court, and declined to resume proceedings.

The Attorney-General appealed.

Walter Pereira, K.C., S.-G., for the Attorney-General, appellant.—
Once the parties have been sent to the Village Tribunal it becomes a Village Tribunal case. The Government Agent may then transfer the case to the Police Court. There is no reopening of the case under the circumstances.

No appearance for the respondent.

September 7, 1911. LASCELLES C.J.—

I am clearly of opinion that the decision of the learned Magistrate is erroneous. The learned Magistrate referred the trial of this case to the Village Tribunal, and he states in his decision that his order of discharge was made under section 191 of the Criminal Procedure Code, and refers to certain authorities under that section. Now, I have not before me the exact terms of the order made by the Magistrate when he referred the case to the Village Tribunal; but if he did discharge the accused, he acted under a misapprehension. He should have acted under section 34 of Ordinance No. 24 of 1889, which simply empowers him to stop further progress of the case, and to refer the parties to the Village Tribunal. The Government Agent, who apparently considers the case of some importance, has now ordered the case to be tried in the Police Court under section 28 (b) of Ordinance No. 3 of 1908. There is, in my opinion, no foundation for the construction which the Police Magistrate has placed on that section. The section empowers the Government Agent or the Attorney-General in the most general terms to direct cases which are triable in the Gansabhawa to be tried in the Police Court. There is absolutely nothing in the section to exclude cases which have been referred to a Gansabhawa by a Magistrate under section 34 of the Ordinance. The case must be remitted to the Magistrate with a direction to proceed with the trial in the ordinary course.

Appeal allowed.

¹ (1905) 2 Bal. 20.