

[IN REVISION.]

1938

Present : **Poyser J.**

DON HARRY *v.* BETTO HAMY.

P. C. Balapitiya, 32,739.

Criminal Procedure Code—Case compounded—Accused entitled to be acquitted—Criminal Procedure Code, s. 290.

Where a criminal case is compounded, the accused are entitled to be acquitted in terms of section 290 (5) of the Criminal Procedure Code.

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

L. A. Rajapakse (with him *V. F. Gunaratne*), for the petitioners.

R. L. Pereira, K.C. (with him *A. P. de Zoysa*), for the respondent.

Cur. adv. vult.

December 1, 1938. POYSER S.P.J.—

In this case the petitioners were charged in the Police Court with offences under sections 434 and 486 of the Penal Code. Evidence was led in support of the charges and summons was directed to be served on the accused for them to appear on March 19, 1938. In fact they appeared before the Magistrate on March 26 and, when charged, pleaded not guilty. The trial was fixed for March 31. On that day the Magistrate records as follows:—"This case is compounded. The complainants will transfer their interests to this house and land as per deed 28785 by C. A. Jayatillaka, Notary Public, for Rs. 250 to D. Darwis Soysa. The money to be paid on or before May 5, 1938. If not paid accused will vacate the house. Call case on May 5, 1938". On May 19, however, the matter again is brought before the Magistrate and he records that "there seems to have been some *bona fide* mistake regarding the terms on which this case was compounded". The Magistrate goes on to state that in view of such disagreement he vacates the terms of settlement in this case and refixes it for hearing. On June 7 the Proctor for the petitioners takes the point that the Court has no power to vacate the

order made on March 31 and after some discussion the Magistrate makes order that the petitioners shall be ejected from the premises in regard to which the dispute between the parties arose. Further orders are made on June 28 and on September 6.

On behalf of the petitioners it is contended that when the case had been compounded the accused should have been acquitted in accordance with the provisions of section 290 (5) of the Criminal Procedure Code. There is no doubt in my mind that this contention is sound. The Magistrate appears to have misdirected himself by treating the case after March 31 as a civil case. This he had no power to do. Once the case was compounded the accused are deemed to be acquitted and it should have been so recorded.

This Court has previously come to similar decisions, viz., in a case which is briefly reported at page LXXX. of Volume XIII. of the *Ceylon Law Recorder* and in the case *P. C. Gampaha No. 37,488* (S. C. Revision Minutes of April 7, 1936).

Acting in revision, therefore, I direct that the accused be formally acquitted, such acquittal to take effect as from March 31, 1938. I also set aside all orders made by the Magistrate subsequent to that date.

Set aside.

