1946   *Present :* **Cannon J.**

AVIS APPUHAMY, Appellant, *and* ROYD, Respondent.

403—M. C. Gampola, 10,467.

Criminal procedure—Compensation for groundlessly causing arrest—Scope of Criminal Procedure Code, s. 253 C (1).

Where the Magistrate, purporting to act under section 253 c (1) of the Criminal Procedure Code, ordered the complainant to pay compensation to the accused who was acquitted—

Held, that section 253 c (1) of the Criminal Procedure Code was not applicable inasmuch as the accused had not been arrested but summoned.

Held, further, that the Magistrate should have called upon the complainant to show cause.

APPEAL against an order of the Magistrate of Gampola.

S. W. Jayasuriya, for the appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

May 20, 1946.   CANNON J.—

In acquitting a person accused of causing hurt by stabbing the Magistrate said : " The accused in this case is really the injured party.   He has been in hospital for 15 days.   I have no doubt that the complainant inflicted the trivial knife injury on himself in order to forestall a charge against him.   I think this is essentially a case where the complainant should pay compensation to the accused who is really the aggrieved party. I order the complainant to pay the accused Rs. 25 as compensation under the provisions of section 253 c (1) of the Criminal Procedure Code ".

Section 253 c (1) of the Code enables the Magistrate to do this only when the person who is ordered to pay compensation has caused a peace officer to arrest another person and there was no sufficient ground for causing such arrest.   In this case the acquitted person was not arrested but summoned, as the record clearly shows.   Further in ordering the complainant to pay compensation the Magistrate did so without calling upon him to show cause (see *18 N. L. R. at page 213*).

The complainant's appeal on both or either of these grounds is not contested by Crown Counsel and must be upheld.   The appeal is therefore allowed and the Magistrate's order set aside.

Appeal allowed.