1931

Present : **Maartensz A.J.**

THE KING *v.* SELLAMMAI.

50—*D. C. (Crim.) Jaffna,* 3,559.

Self-defence—Charge of grievous hurt—Burden of proof—Evidence of accused—Evidence Ordinance, s. 105.

In a charge of grievous hurt, a plea of self-defence cannot succeed unless the accused gives evidence on his own behalf, except where it is manifest from the evidence for the prosecution that the plea must be upheld.

It is irregular to restrict the evidence of a Medical Officer to a production of the report furnished by him regarding the injuries he has found on the persons sent to him for examination.

APPEAL from a conviction by the District Judge of Jaffna.

R. L. Pereira, K.C. (with him *Ramachandra*), for appellant.

M. F. S. Pulle, C.C., for the Crown.

May 29, 1931. MAARTENSZ A.J.—

This is an appeal by the first accused, who has been convicted of causing grievous hurt with a knife. It was submitted in appeal that the accused was entitled to an acquittal on the ground that he acted in self-defence provided by law.

I am unable to assent to this submission as there is no evidence on the record that these injuries were inflicted by the first accused in self-defence. No doubt the fact that the complainant is a sturdy bully and had come to the gate of the accused's house and struck the second accused with a club suggests that the knife injuries were inflicted in self-defence of the first accused himself, or of the second accused, his father, or of the third accused, his brother. But the first accused has not gone into the witness box and given

evidence that he was acting in self-defence, nor, so far as I can see, is there any suggestion made by questions in cross-examination that the injuries were inflicted on the complainant in self-defence. I am of opinion, where an accused person sets up a plea, the burden of proving which is by the provisions of section 105 of the Evidence Ordinance placed on the accused, his counsel takes a great responsibility in not calling the accused to give evidence in support of that plea. If the accused and his counsel elect that the accused should not give evidence, such a plea cannot be upheld unless it is manifest from the evidence of the prosecution that the accused was acting in self-defence. It is not manifest from the evidence of the prosecution in this case that the accused was acting in self-defence. It is impossible in this case to say whether the accused inflicted these injuries by way of retaliation or whether they were inflicted in self-defence.

I have noticed recently that a practice has grown up of not recording the evidence of the doctor regarding the injuries. The doctor's evidence is restricted to a production of his report which he sometimes says is correct, and sometimes, as in this case, he is not asked whether it is correct or not.

I am of opinion that this practice is not justified by any provision of law. The law makes no provision for any report by a doctor, nor can I find any provision by which the contents of a report can be substituted for the direct evidence regarding the injuries found by the doctor on an injured person. No doubt the practice is of great convenience to busy Magistrates, but if it is a practice which is not justified by law it should not be recognized because it is a matter of convenience to a Magistrate.

Section 406 provides that the report of a Government Analyst may be used as evidence in any inquiry, trial or other proceeding in this Court. If the Legislature considered that the same privilege should be extended to the report of a doctor I have no doubt the necessary provision would have been made in the Code. In the absence of such a provision, I am of opinion that for a doctor to swear to the truth of certain statements contained in a report is not evidence, and personally if I was a trial Judge and that report was tendered as a part of the deposition of a doctor who was not called I should reject it. If a report can be embodied as part of the evidence, there is no reason why a witness should not produce a proof of the evidence he is going to give and say "I swear to the correctness of that statement". It would be just as much evidence as a statement by the doctor that the contents of his report are true.

The danger of such a practice is demonstrated in this case where the doctor in his evidence before the Police Magistrate has not even stated that the contents of his report are correct. The accused had been charged and convicted of grievous hurt on the footing that the injury inflicted by him endangered life. The doctor in his report has not stated that the injury did in fact endanger life. After describing the injuries by numbers. he says, "which have been caused by pointed cutting instruments and No. 4 appears to me to be grievous, endangering life by bleeding". This report purports to have been sworn to before a Justice of the Peace. For what purpose the report was sworn to before a Justice of the Peace I do not know.

On the evidence before me the accused committed no more than simple hurt, and I alter the conviction to one under section 315 of the Penal Code and I reduce the sentence to one month's rigorous imprisonment.

Sentence varied.