

Present: Wood Renton A.C.J.

1913.

FERNANDO *v.* PERERA.

P. C. Matale, 739.

Accused unrepresented by a pleader—Magistrate should inform accused of his right to give evidence on his behalf when calling upon accused for defence—Criminal Procedure Code, s. 296.

Where the record did not show that the Magistrate complied with the provisions of section 296 (1) of the Criminal Procedure Code, the Supreme Court sent the case back for a new trial.

THE facts appear from the judgment.

Wadsworth, for the accused, appellant.—The conviction cannot stand, as the accused, who was undefended by a pleader, was not informed by the Magistrate of his right to give evidence on his own behalf, as required by section 296 (1) of the Criminal Procedure Code. There is no entry on the record that the provisions of the section have been complied with.

V. Grenier, for the respondent.—The accused did call some witnesses to prove his innocence; he apparently did not want to give evidence. The absence of the entry in the record is only a mere irregularity, which is not fatal to the conviction (section 425, Criminal Procedure Code).

October 30, 1913. WOOD RENTON A.C.J.—

The accused-appellant has been charged under section 11 of Ordinance No. 11 of 1865, first, with having refused to work without leave or reasonable cause, and in the next place, with having prevented coolies from working on the estate. The Police Magistrate who heard the case convicted him, and sentenced him to six weeks' rigorous imprisonment on each count. The sentences were directed to run consecutively. The evidence, as it stands, discloses a *prima facie* case against the accused. But he alleges in his petition

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of appeal that he was not defended by a proctor at the trial, that he was unaware of his right to give evidence, and that if he had had the opportunity of placing his version of the circumstances before the Court the result would or might have been very different. The accused himself admits that he was asked by the Police Magistrate whether he had anything to add to his original statement when charged. There is nothing on the face of the record to show whether the provisions of section 296 (1) of the Criminal Procedure Code entitling an accused person to be expressly informed of his right to give evidence on his own behalf, and as to what are the main points against him, were complied with.

In the circumstances, I think that the accused is entitled to a new trial. I set aside the conviction and the sentence and send the case back for this purpose. The trial will, I understand, have to take place before another Judge, as the original Judge of first instance is no longer in Matale. There can, however, be no objection to the evidence already recorded standing so far as it goes, if both parties consent to that course being adopted. It will, of course, be open to either side to recall any witness for further examination or cross-examination, and to adduce such further evidence as may be desired.

Sent back.
