1945 *Present:* **Keuneman S.P.J. and Rose J.**

THE KING *v.* DAYARATNE *et al.*

76—D. C. (Crim.) Colombo, 620/30,132.

Jurisdiction—District Court—Indictment—Competency of the District Court to question the regularity of proceedings in the Magistrate's Court—Penal Code, s. 317—Criminal Procedure Code, ss. 12, 152 (1) and (2), 203 (1), 406 (5).

The first accused was indicted on a charge of having caused grievous hurt, under section 317 of the Penal Code, and the second accused was charged with abetment.

At the trial, Counsel for the accused submitted that the medical evidence recorded in the Magistrate's Court did not disclose an offence under section 317 (viz., grievous hurt), and that the Magistrate had no authority to proceed to non-summary inquiry, but should have tried the accused summarily, viz., for simple hurt.

The District Judge, thereupon, had the doctors summoned, recorded their evidence, and proceeded to find that grievous hurt had not been caused. He went on to find that the committal was a nullity and, therefore, discharged the accused,—

Held, that the District Judge had no power to inquire into the question as to whether the proceedings in the Magistrate's Court were irregular. It was his duty to try the case.

APPEAL by the Attorney-General against an order of discharge entered by the District Judge of Colombo.

H. W. R. Weerasooriya, C.C., for the Attorney-General, appellant.

G. E. Chitty, for the accused, respondents.

Cur. adv. vult.

November 23, 1945. KEUNEMAN S.P.J.—

This is an appeal by the Attorney-General against an order of discharge entered by the District Judge under the following circumstances.

The first accused was indicted on a charge of having caused grievous hurt to P. Edwin Silva with a knife, under section 317 of the Penal Code. The second accused was charged with abetment under sections 317 and 102. It is to be noted that offences under section 317 are triable by the District Court and not by the Magistrate's Court. The matter had been inquired into by the Magistrate who committed the accused, and the Attorney-General forwarded the indictment to the District Court. When the matter came up for trial before the District Judge, Counsel for the accused submitted that the medical evidence recorded in the Magistrate's Court did not disclose an offence under section 317 (viz., grievous hurt), and that the Magistrate had no authority to proceed to non-summary inquiry but should have tried the accused summarily, viz., for simple hurt. It was pointed out that Dr. Fernando, speaking to the injury on Edwin Silva, said that " the wound was scalp deep . . . . The bone was chipped over an area of about ½ in. × ½ in. The outer table was not penetrated. The injury was grievous . . . . The injured

man was in hospital for 23 days ". Dr. Handy describing the injury said—" The bone had been cut. The injured man was in hospital for 23 days. The injury is grievous. " It was argued that this was insufficient to show that grievous hurt had been caused, and certain authorities were cited to show that a cut in the bone which does not penetrate or sever the bone does not amount to grievous hurt, and that the residence in hospital was not shown, to have been accompanied by inability to follow ordinary pursuits.

Now, even if the District Judge had power to consider the matter—a position I shall presently examine—I do not think the District Judge was entitled to act as though he was constituted a Court of Appeal from the Magistrate's Court. It may well be that the Magistrate was satisfied on the evidence that grievous hurt had been caused, and there was the positive evidence of both doctors that the injury was grievous. Whether that was correct or not the District Judge could well investigate at the trial, and could enter a verdict according to his findings.

In this case the District Judge took an unusual step. He had the doctors summoned under section 406 (5), Criminal Procedure Code, recorded their evidence, and proceeded to find that grievous hurt had not been caused. The District Judge went on to find that the committal was a nullity, and he therefore discharged the accused. I am of opinion that the District Judge had no power to employ section 406 (5) for the purpose for which he did in fact employ that section, and that he had no authority to hold the further inquiry which he purported to hold.

Had the District Judge authority to declare the committal a nullity ? Mr. Chitty depended mainly on section 152 (1) and (2) of the Criminal Procedure Code and argued that an imperative duty lay upon the Magistrate to apply the procedure in chapter XVI (Non-summary Procedure) to cases " not triable summarily by a Magistrate's Court ", and also to apply the procedure in chapter XVIII (Summary Procedure) to cases " triable summarily by a Magistrate's Court ". It is unnecessary to consider whether such an imperative duty was imposed on the Magistrate, and whether the accused person had some remedy in law where that imperative duty was infringed. The real question is whether the District Judge had power to grant relief in such cases.

Section 152 is a section which was present in the Criminal Procedure Code even before the amending Ordinance of 1938. But in spite of this the Supreme Court found no difficulty in finding that " a District Court, before which an accused person is brought for trial upon a warrant of commitment regular on its face and to which an indictment is presented by the Attorney-General, is not competent to inquire whether the proceedings that culminated in the committal were regularly instituted or regularly conducted. It is its duty to try the accused ".

This was an indictment under section 180 of the Penal Code, and the objections taken were (1) that the sanction of the Attorney-General was required under section 147 of the Criminal Procedure Code but no such sanction had been given, and (2) that the complaint had not been made by the public servant concerned or by an officer to whom he was

subordinate: see *King v. Harip Boosa* [1]. This case followed a number of earlier cases, see *Attorney-General v. Appuwa Veda* [2]; *King v. Kolandu* [3], where the indictment was for grievous hurt but the Judge thought the evidence pointed to culpable homicide; *Queen v. Thomis* [4], *Queen v. Don Davith* [5]—both these were indictments for theft of cattle under Rs. 50 in value; and also other cases decided before 1898.

I do not think chapter XV confers upon the District Judge any power to inquire into the question as to whether the proceedings in the Magistrate's Court were irregular.

Section 12 states—" No District Court shall take cognizance of any offence unless the accused person has been committed for trial by a Magistrate's Court duly empowered in that behalf . . . " In the present case the Magistrate has committed, and no question of jurisdiction arises. There is no question affecting territorial jurisdiction, and both the District Court and the Magistrate's Court have jurisdiction to try offences under sections 314, 315 and 316, and the District Judge had jurisdiction to try offences under section 317 (see Schedule A). In my opinion the Magistrate's Court was " empowered in that behalf " and the Magistrate had held the preliminary inquiry under chapter XVI.

Under section 163 (1) " If the magistrate considers the evidence sufficient to put the accused on his trial, the magistrate shall commit him for trial ". Section 164 deals with the case of conflict of evidence. There can be no doubt in this case that the magistrate considered the evidence sufficient and committed.

Under section 165 (F) where the Attorney-General is of opinion that the case is one which should be tried on indictment, the indictment shall be drawn up and when signed in the manner provided shall be forwarded to the Court of trial selected by the Attorney-General to be filed in that Court. " The fact that the indictment has been so signed, forwarded, and filed shall be equivalent to a statement that all conditions required by law to constitute the offence charged and to give such court jurisdiction have been fulfilled in the particular case. "

All the steps mentioned have been taken, and I do not think it was open to the District Judge thereafter to embark upon an inquiry as to whether the proceedings were irregular. In fact the only remaining step was for the District Judge to try the case: see section 203 (1). " If the case comes before the Court on the committal of a Magistrate's Court, the accused shall be arraigned on the indictment served on him as provided by section 165 (F) ".

It is possible that relief may be obtained in the case of a serious irregularity on application to the Supreme Court, but in my opinion the District Judge has no authority to inquire into such a matter.

I allow the appeal and set aside the order of discharge, and send the case back for trial by the District Judge in due course.

ROSE J.—I agree.

Appeal allowed.

[1] *11 N. L. R. 355.*
[2] *10 N. L. R. 199.*
[3] *5 N. L. R. 236.*
[4] *1 Browne 20.*
[5] *1 Browne 400.*