

1902.  
September 15.

THE KING v. BANDIRALE.

D. C., Chilaw; 2,692.

*Criminal Procedure Code, s. 406, sub-section 4—Examination of medical witness—Certificate of advocate—Reasons for advocate's opinion—Irregularity.*

In a case of grievous hurt, committed for trial before a District Court, the accused's advocate certified in writing, before the commitment of the trial, that the medical officer who had examined the wounds inflicted should be present to give evidence,—

Held, that the District Judge, under section 406, sub-section 4, was bound to summon the witness, and had no right to cross-examine the advocate as to the reasons for his certificate.

**I**N this case of voluntarily causing grievous hurt the accused was convicted and sentenced to twelve months rigorous imprisonment.

He appealed.

H. J. C. Pereira, for appellant.—The conviction is bad for several reasons:—(1) Some weeks previous to the trial of the accused the District Judge visited the scene of the alleged offence, called before him the parties concerned, and examined them. After such an inquiry the District Judge could not have had an open mind to enter upon the trial. He disqualified himself from trying the accused. (2) The appellant's advocate certified in writing before the commencement of the trial that it was in his opinion expedient that the Government medical officer who had examined the

wounds inflicted should be present to give evidence at the trial, but the District Judge ruled that the presence of the said officer was not necessary, in contravention of sub-section 4 of section 406 of the Criminal Procedure Code, which gives the Judge no discretion in the matter. (3) The Judge was also *ultra vires* when he examined the accused's advocate as to the reasons for the certificate signed by him. (4) The Judge admitted improperly the notes of an inquiry made by one of the witnesses, who was the Muhandiram of the korale where the alleged offence was committed. This witness was allowed to refresh his memory by referring to these notes, and they were produced in Court and made part of the record. And counsel argued on the merits also. 1902.  
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*Rámanáthan, S.-G.*, for the Crown.—The irregularities complained of have not been shown to affect the accused prejudicially.

15th September, 1902. MONCREIFF, A.C.J.—

Counsel for the appellant has taken exception to many points in the Judge's dealing with this matter. Amongst other things, he says that the Judge had no right to refuse the application for a summons to the medical officer after the advocate of the accused had certified that his presence at the trial was necessary. According to section 406, sub-section 4, of the Criminal Procedure Code, if an advocate of the Supreme Court engaged for the accused in the case certifies that the presence of the medical officer is necessary, such officer "shall be summoned" for the purpose of giving evidence in the same manner as the other witnesses for the prosecution. I think the Judge should not have cross-examined the advocate as to the reasons for his certificate that the presence of the witness was necessary, and should not have adjudicated upon their sufficiency.

It is also objected that the Judge should not have admitted the inquirer's notes. It appears that the inquirer made use of his notes when he was in the box for the purpose of refreshing his memory, in which case section 131, sub-section 2, of the Criminal Procedure Code provides that the provisions of the Ceylon Evidence Ordinance, section 161 or section 145, shall apply. I am not aware whether circumstances arose in the case rendering the application of this section imperative. But I do not find that either in this respect, or in respect of the evidence of the medical officer, any substantial injustice was done to the accused. The case seems to have been proved, and I agree with the Judge that it was one which called for exemplary punishment. I am not disposed to interfere.