

HOPE v. MUTTUSAMY.

P. C., Badulla, 15,770.

1896,
March 4.

*Acquittal of accused—Cancellation of order of acquittal—Jurisdiction—
Time for appearance of complainant—Criminal Procedure Code, s.
228—Ordinance No. 22 of 1890.*

When a Police Magistrate, acting under the provisions of section 228 of the Criminal Procedure Code as amended by Ordinance No. 22 of 1890, makes order acquitting an accused owing to the absence of the complainant, he has no power to cancel thereafter that order. The only remedy is an appeal by the Attorney-General. Under section 228 the complainant has, for his appearance, the whole of the day appointed—that is, the whole of the usual court hours of that day.

THE facts of the case sufficiently appear in the judgment.

Jayewardena, for appellant.

Wendt, for respondent.

4th March, 1896. BONSER, C.J.—

This is an appeal from a conviction of the Police Court of Badulla.

The ground of appeal of the defendants is, that they have been already acquitted, and that therefore the Magistrate had no right to try them, and in my opinion that is made out. I find an entry on the record made by the Magistrate: "January 20. Complainant absent; first and second accuseds present; accuseds acquitted; section 228 of Ordinance No. 22 of 1890;" and that entry is initialled by the Magistrate. Then across this is written "Cancelled; parties since present." But when a Magistrate has made an order acquitting an accused, he has no power to cancel that order. The only remedy is an appeal by the Attorney-General. No doubt the Magistrate quite misconceived the meaning of this section 228, which he cites. Section 228 provides that "if upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Police Magistrate shall, notwithstanding anything hereinbefore contained; acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day." Now, what appears to have taken place here was this. The Magistrate sat earlier than usual on the morning of the 20th of January. The accused

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were there, but the complainant was not, and thereupon the Magistrate acquitted them. The section did not warrant any such proceeding ; it does not say, " if the complainant does not appear at the hour appointed," but " upon the day appointed," and therefore he has the whole of the day for his appearance, *i.e.*, the whole of the usual court hours. But although the Magistrate acted wrongly, yet in acquitting he did an act within his jurisdiction, and having done so he was *functus officio*. His mistake could only be set right by an appeal. In spite of this acquittal the Magistrate cancelled his order, and the case was tried on a subsequent day, and resulted in the conviction of the appellants, who were sentenced—the first accused to pay a fine of Rs. 20, in default to undergo one month's rigorous imprisonment ; and the second and third accused to pay each a fine of Rs. 10, or in default to undergo one month's rigorous imprisonment.

This Court can, however, exercise its powers of revision and set aside the order of acquittal of the 20th of January ; but having regard to the trifling nature of the offence, as shown by the punishment awarded, it will not do so in this instance.

The conviction is set aside, and the accused are severally acquitted.

