

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

1909.

THE KING v. THEMANIS PERERA.

January 14.

D. C. (Criminal), Colombo, 2,121.

Indictment for making contradictory statements—Summary trial—Indictment not properly signed—Criminal Procedure Code, s. 439—Ordinance No. 21 of 1906.

An indictment under section 439 of the Criminal Procedure Code, where such indictment is presented in the District Court, must be signed by the Secretary of such Court. Where the Chief Clerk of the Court of Requests signed the indictment,—

Held, that the indictment was bad.

A PPEAL by the accused from a conviction by M. S. Pinto, Esq., Additional District Judge, under section 439 of the Criminal Procedure Code, as amended by Ordinance No. 2 of 1906. The facts sufficiently appear in the judgment.

H. Jayewardene (with him *F. A. Tisseverasinghe*), for the accused, appellant.

W. de Saram, C.C., for the Crown.

Cur. adv. vult.

January 14, 1909. HUTCHINSON C.J.—

There are three grounds of appeal urged by the appellant's counsel. The first is that the indictment was not signed by the Secretary. The accused was arraigned under section 439 of the Criminal Procedure Code, which requires that at a trial in a District Court under that section the indictment shall be prepared and signed by the Secretary of the Court. This indictment is signed by Edgar A. Brohier, Chief Clerk. Mr. Brohier gave evidence at the trial and said : " I am the Chief Clerk of the Court of Requests, I do the work of the Secretary of the Additional District Court." The objection that the indictment was not signed by the Secretary is taken in the petition of appeal, but was not mentioned in the District Court. If it had been taken there, the Judge might have given some explanation, and I deferred giving judgment in order that I might make inquiry of him ; but I find he is absent on leave. I have inquired from Grenier J., who has had long experience as District Judge, and he says that in his experience the indictment in these cases in the District Court or the Additional District Court is always signed by the Secretary of the District Court. In my opinion this is essential ; and the omission or irregularity in the indictment such as is referred to in section 625, because until the document is so signed it is not an indictment. I accordingly set the conviction aside.

Appeal allowed.