

1905.

February 7.

KING v. SENGINA.

*D. C., Negombo, 2,309.*

*Jurisdiction—Itinerating Magistrate—Offence committed in one judicial district, but charge entertained in another district—Criminal Procedure Code, ss. 146 and 423.*

The mere fact that an Itinerating Police Magistrate having jurisdiction over parts of two judicial districts entertained, while holding Court in one district, a complaint of an offence committed in another district over which he has jurisdiction, will not render his order that the accused should be committed for trial liable to be set aside, unless the irregularity has occasioned a failure of justice, as provided in sections 146 and 423 of the Criminal Procedure Code.

IN this case of robbery, which was inquired into and committed by Mr. P. de Saram, the Itinerating Police Magistrate, Western Province, it was urged before the District Judge of Negombo, who was trying it, that the proceedings and order of committal for trial were void, because Mr. P. de Saram, having concurrent jurisdiction over parts of the judicial district of Colombo, Negombo, and Avisawella, had entertained at Welisara, in the Colombo District, the charge of robbery alleged to have

been committed at Uggalboda in the Negombo District, and had completed all the proceedings at Welisara.

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It was the practice of Mr. P. de Saram to hold Court at Welisara for the disposal of the Colombo District cases, at Henaratgoda for the disposal of the Negombo District cases, and at Pasyala for the disposal of the Avisawella District cases.

The District Judge of Negombo (Mr. F. Bartlett) found as follows:—

“ It is candidly admitted that there is no question of prejudice to parties. The matter is rather a contest between the Negombo Bar and the gentlemen who practise in the Itinerating Court, the former considering Mr. De Saram's concurrent jurisdiction as an injury to them and an infringement of their rights.

“ I can only be guided by what I believe the law. I believe Mr. De Saram's practice of hearing cases at Welisara has continued for a considerable time unchallenged, and I think the same practice holds in Jaffna, where the Police Magistrate, Jaffna, who has concurrent jurisdiction over Kayts, hears Kayts cases at Jaffna in the absence of the Kayts Police Magistrate at Delft.

“ If the procedure in the Police Court has been irregular, I think that section 146 of the Criminal Procedure Code cures any defect.

“ I convict accused under section 380 of the Criminal Procedure Code. I sentence each to one day's simple imprisonment and to pay a fine of Rs. 60, in default to three months' rigorous imprisonment. ”

The accused appealed. The case was argued on 7th February 1905.

*E. W. Jayawardene*, for appellant, argued on the merits, and also contended that it was irregular on the part of the Itinerating Magistrate to have investigated the case at Welisara in the Colombo District instead of at Henaratgoda in the Negombo District.

*Loos, C.C.*, appeared for the respondent.

7th. February, 1905. LAYARD, C.J.—

The order of committal, in the circumstances found, is not liable to be set aside under section 146 of the Criminal Procedure Code, as there is no proof that the irregularity has occasioned a failure of justice.

[On the merits, his Lordship affirmed the conviction, but reduced sentence of Rs. 60 to Rs. 10.]