

1896.

June 3.

PERIS v. SIMANIS.

P. C., Balapitiya, 15,121.

Jurisdiction—Prosecution directed by Police Magistrate—Incompetency of Magistrate to try.

On information given to the Police Magistrate by the proctor of a party to a case that one of his witnesses had been interfered with by the accused, the Police Magistrate directed a Sergeant-Major of Police to charge the accused under Ordinance No. 11 of 1894—

Held, that it was not competent to the Police Magistrate to try the charge so instituted.

THE facts of the case appear in the judgment of his Lordship.

Pereira, for accused, appellant—The Police Magistrate directed the prosecution, and he was virtually the complainant in the case. A Magistrate must have a free hand, not only to convict or acquit an accused, but to do whatever else the justice of the case may require. The case may be one, for instance, in which the accused should get compensation from the complainant; but it would be hopeless to expect the Magistrate to hold that the prosecution was frivolous or vexatious, and award compensation. The Magistrate,

in a case like this, will not only have a strong inclination to decide in favour of the prosecution, he having started it, but he has not a free hand to do full justice between party and party.

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Cooke, C. C., for complainant, respondent, cited 7 *S. C. C.* 36.

3rd June, 1896. BONSER, C.J.—

This is a conviction under what is commonly called the Touts' Ordinance, No. 11 of 1894. The appellants were convicted of having intermeddled with certain witnesses in a case that was being tried in the Balapitiya Police Court, and having caused them to leave the Court and not give evidence. The prosecution came about this way. The Police Magistrate was trying a case, and the counsel for the accused brought to his notice the fact that two of his witnesses had been interfered with and sent away from the Court. Thereupon the Police Magistrate directed the Sergeant-Major of Police to charge the appellant under the Ordinance. The Sergeant-Major at once filed a written plaint charging them with the offence in question, on which the Police Magistrate then and there made an order for the issue of summons. The objection has been taken that the Police Magistrate is the actual prosecutor in the case, and therefore he ought not to have tried the case. I think the contention is sound. The Sergeant-Major knew nothing about the matter. He merely obeyed the orders of the Magistrate. I cannot understand any Magistrate directing a Sergeant-Major or anybody else to file a plaint. What he might properly have said to the Sergeant-Major is this: "I have reason to believe that an offence has been committed. I call your attention to it. You should make inquiry, and if the result of such inquiry prove satisfactory, institute proceedings."

If that had been done, there would have been no objection to the Magistrate hearing the case, for the responsibility of instituting the charge would have rested upon the police officer. At present the whole responsibility rests upon the Magistrate, and he is virtually both prosecutor and judge. Therefore, in my opinion, the conviction should be quashed and the case remitted to the Police Magistrate of Galle for trial. I have not heard the evidence read, and know nothing about it, and I express no opinion whatever on the merits.
