

SIYADORIS *v.* GUNAWARDENA *et al.**P. C., Galle, No. 18,082.*

1895.

October 11.

Criminal procedure—Inquiry into complaint for offences beyond and within summary jurisdiction of Magistrate—Procedure to be followed.

When a Magistrate is inquiring into a complaint containing offences both beyond and within his summary jurisdiction, and, after evidence is recorded, comes to the conclusion that the offence beyond his jurisdiction is not made out, he should discharge the accused from the graver offence and formally record that discharge before calling on him to answer to a charge of the offence within his jurisdiction and proceeding to the trial of that charge.

THE complainant, in his plaint, charged the accused with unlawful assembly and riot, and further charged the third and fourteenth accused with theft of a padda boat of the value of Rs. 150. The magistrate took evidence, framed a charge under section 140 of the Ceylon Penal Code against all the accused for being members of an unlawful assembly, and convicted them of that offence. The accused appealed.

Dornhorst, for appellants.

Jayawardena, for respondent.

11th October, 1895. BONSER, C.J.—

This conviction cannot stand. This case is on all fours with the case of *Saram v. Weera* (*P. C., Colombo, No. 37,639*) reported in *1 New L. Rep. p. 95*.

The Magistrate has mixed up the proceedings with a view to committal with proceedings for a conviction in a summary trial. The conviction must be quashed, and the case transferred to the District Court of Galle. It is alleged that this is a dispute involving native customs and usages of the villagers and the District Judge might well avail himself of the assistance of assessors who are acquainted with such customs and usages.

The case is, therefore, transmitted to the District Court of Galle to be tried with assessors, the proceedings in the Court below being quashed so far as it is necessary for such purpose.

WITHERS, J.—

I agree in the Chief Justice's order, and I am entirely at one with him in his judgment in the case of *Saram v. Weera*.

I only wish to repeat here what I have laid down in a previous judgment, viz., that when a Magistrate is inquiring into a complaint containing offences both beyond and within his summary jurisdiction, and, after evidence is recorded, comes to

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the conclusion that the offence beyond his jurisdiction is not made out, he should discharge the accused from the graver offence and formally record that discharge before calling on him to answer to a charge of the offence within his jurisdiction, and proceeding to the trial of that charge.

BONSER, C.J.—

I quite agree in what has just been said by my brother Withers.
