

1897.

*September 30  
and  
November 3.*

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FERNANDO v. TAMBY SINNO.

*P. C., Chilaw, 12,011.*

*Security to keep the peace—Order to show cause—Criminal Procedure Code, ss. 92 and 97.*

When a person appears under an order from a Magistrate to show cause why he should not be ordered to execute a bond for keeping the peace, the Magistrate should proceed to inquire into the truth of the information upon which he has acted and to take such further evidence as may appear necessary. This inquiry must be conducted as if it were a summary trial in the Police Court.

THE accused appeared before the Magistrate on an order from him to show cause why the accused should not be bound over to keep the peace for six months for threatening to shoot the complainant. On the day of his appearance the Magistrate

did not call the complainant and his witnesses to give evidence, nor did he give the accused an opportunity of cross-examining them, but called upon the accused to show cause as required, and ultimately made the order absolute.

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The accused appealed.

*E. Jayawardene*, for appellant, contended that an order passed by a Magistrate requiring a person to "show cause" why he should not be ordered to furnish security for keeping the peace is not in the nature of a rule *nisi*, implying that the burden of proving innocence is upon such person. The accused has not been given an opportunity of cross-examination, and the proceedings were therefore irregular. He cited *1 I. L. R. 9 All. 452*, and *1 I. L. R. 23 Calc. 493*.

*De Vos*, for respondent.—The accused has taken the burden on himself, and the record does not show that the accused insisted on his right of cross-examination.

4th October, 1897. LAWRIE, A.C.J.—

I set aside the order to find security to keep the peace and to be of good behaviour for six months, and to come up when called upon to receive sentence.

For the latter part of the order there seems no foundation. The respondent had not been convicted.

The procedure was irregular, for it is enacted by section 97 that when an order is made under section 92 and the respondent appears, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

This inquiry must be conducted as if it were a summary trial in the Police Court. This was not done. On the merits I am of the opinion that the respondent succeeded in showing cause why the order should not be made.