

FERNANDO v. WELENIS APPU *et al.*

*P. C., Kalutara, 19,320.*

*Witness remaining within hearing of evidence given in Court—Right of Court to reject evidence of such witness.*

A Judge has no right to reject a witness on the ground that he remained in Court in contravention of an order to withdraw.

AFTER the case for the prosecution had been closed, the Police Magistrate recorded that the accused “did not call any witnesses for the defence except Saris, who was not in the witness-shed at the time, but close to the court-house and heard all previous evidence. I decline to hear him.”

The accused having been convicted of voluntarily causing hurt under section 314 of the Penal Code, they appealed.

*Pereira*, for appellant.

The Supreme Court set aside the judgment of the Court below and sent back the case in order that the witnesses for the accused might be examined.

7th May, 1895. LAWRIE, A.C.J.—

In my opinion it was irregular to refuse to allow the examination of a witness for the accused merely because it was said that the witness had been close to the court-house during the trial, and had heard all the previous evidence. Taylor on Evidence, § 1,260, states the law.

It was settled long ago in *Chandler v. Horne*, 2 M. & Rob., p. 433, that a Judge has no right to reject a witness on the ground that he remained in Court in contravention of an order to withdraw.

The olden law of Scotland, which the learned Police Magistrate seems to have followed, was corrected by the Act 3 & 4 Vic., c. 59, section 3.

The Ceylon Civil Procedure Code contains a section (174) at variance with the English law, but our Criminal Procedure Code has no corresponding section.

Of course, if in the course of examination or cross-examination, a witness admits he was in Court during the examination of a former witness, it is a point worthy of note ; but the accused ought not to be deprived of the right to call witnesses merely because they have not been kept out of the court-house.

