1903.

April 30.

THE KING *v.* HARMANIS.

D. C., Galle, 13,176.

Criminal Procedure Code, s. 157—Discharge—Further prosecution for the same offence—Committal thereon to trial before District Court—Competency of District Judge to question committal.

Where a Police Magistrate acting under section 157 of the Criminal Procedure Code discharged an accused on the ground that the evidence did not establish a *primâ facie* case of guilt, and another Magistrate upon a fresh inquiry committed the acsused for trial before a District Court:

Held, it was not competent for the District Judge to enter into the question whether the Magistrate who ordered the committal had any right to hold the fresh inquiry which ended in such committal, and that it was the duty of the District Judge to hear and determine the case.

Norman v. Perera (4 N. L. R. 85) explained.

THE accused above named were charged under sections 443 and 369 of the Penal Code. At the inquiry the Police Magistrate, Mr. Gunatilake, found there was no *primâ facie* case against them, and made an order discharging them.

Mr. Ekanayeke, the successor to Mr. Gunatilake as Police Magistrate, held a fresh inquiry, and committed the accused for trial at the District Court of Galle.

At the District Court the counsel for the accused took as a preliminary objection that the committal was bad, as the order of discharge given by the first Magistrate still held good, and the second Magistrate had no right to hold a fresh inquiry. The learned District Judge, Mr. J. D. Mason, thereupon made the following order:—

"I uphold the objection raised by Mr. Jayawardene on behalf of the accused. On the 11th March, 1890, the Magistrate, Mr. Gunatilake, made this order: 'The evidence does not establish a *primâ facie* case of guilt. I do not believe it. The accused are discharged.'

"As in the case reported in *4 N. L. R. 85*, the Magistrate exercised his discretion, and after examining the complainant and his witnesses came to the conclusion that there was no case for criminal prosecution. If the Magistrate was wrong the procedure was an appeal to the Supreme Court under section 337. It was not open to the Magistrate who succeeded Mr. Gunatilake to treat as null and void the legal order of discharge and the refusal to issue process under section 151 of his predecessor. I direct that the accused be discharged."

Against this order the Attorney-General appealed.

Fernando, C.C., for appellant.

No appearance for respondents.

30th April, 1903. LAYARD, C.J.—

I set aside the order of the District Judge discharging the accused from this prosecution.

The Magistrate in the Police Court acted under the provisions of section 157 of the Criminal Procedure Code and discharged the accused. Sub-section (2) of that section enacts, that a discharge under that section does not bar a further prosecution for the same offence. The District Judge has held that it does bar a further prosecution for the same offence, and in support of his finding he cites the judgment of Chief Justice Bonser in the case of *Norman v. Perera*, *4 N. L. R. 85*. But it is clear that Chief Justice Bonser does not in that judgment decide that a discharge under section 157 of the Criminal Procedure Code bars a further prosecution for the same offence; he merely decided that where a Police Magistrate has refused to issue process two remedies are open to the person aggrieved, viz., either an application to the Supreme Court for a

1903.
April 30.
LAYARD, C.J.

mandamus or an appeal to the Supreme Court with the sanction of the Attorney-General. That decision has no bearing on the question of a discharge under section 157 being a bar to a further prosecution. The provisions of sub-section (2) of section 157 are so explicit that I cannot understand how the District Judge made up his mind in this case to discharge the accused.

The order of discharge is set aside and the case remitted to the District Court to be proceeded with in due course of law.