

1895.

QUEEN *v.* SUSE TISSERA *et al.**D. C., Chilaw (Criminal), 2,459.**Trial of criminal case—Irregular reception of evidence—Consent of parties.*

In a criminal case it is irregular to import into it and consider as evidence the evidence taken and recorded in another case, though the complainants therein were the accused in the former case.

Consent thereto, on the part of the parties to the counter-cases, will not avail to render irregular proceedings regular.

THIS was a case in which seven persons were indicted for rioting, and three of them for voluntarily causing hurt. After the evidence for the prosecution and the statements of the accused, there followed in the record "for defence" the evidence of five witnesses on oath, two of whom appeared to be persons who were on their trial in this case.

On appeal against a conviction, his lordship the Chief Justice inquired under what circumstances the two accused gave their evidence for themselves on oath.

Dornhorst, for the accused, and *Rámanáthan, S.-G.*, for the Crown, agreed that a reference should be made to the District Judge.

His reply to the Registrar was as follows :—

With reference to your letter No. 299 of the 6th instant, I have the honour to inform you that the accuseds were prosecutors in counter-case No. 2,460, and that they desired to base their defence on the evidence for the prosecutions therein recorded. I accordingly took steps to have that evidence recorded again for the evidence in the present proceedings, deeming it just that the gist of the two counter-charges should be fully set out in one record.

The case was set down for argument, and the same counsel appeared.

1st July, 1895. BONSER, C.J., after stating the facts of the case as given above, said :—

The Acting District Judge (Mr. Thorburn) says he took steps to have the evidence of the accused again recorded for the defence in the present proceedings. As far as I understand, the steps consisted of having the evidence in the other record copied in this record. It may be said that the accused were not prejudiced by this proceeding, but this Court has always held that it is of the greatest importance that the proceedings, especially criminal proceedings, should be conducted regularly and according to law, and that consent will not avail to render irregular proceedings regular.

I think that the proper order to make will be to quash the conviction and remit the case to be re-tried.

Ordered accordingly.