

1919.

Present: Schneider A.J.

POLICE OFFICER *v.* DINESHAMY *et al.*

544 to 546—*P. C. Balapitiya, 46,479*

Binding over to keep the peace—Criminal Procedure Code, s. 81—Three factions—One proceeding—Joinder of parties.

Persons belonging to three factions, and whose defences were distinct, were called upon to show cause why they should not be bound over to keep the peace in one proceeding.

Held, that this was irregular.

THE facts appear from the Judgment.

Zoysa, for appellants.

July 28, 1919. SCHNEIDER A.J.—

This is an appeal by the first, third, and sixth accused against an order made under section 81 of the Criminal Procedure Code directing them to execute a bond to keep the peace for a period of six months.

¹ (1918) 20 N. L. R. 338.

1919.

SCHNEIDER
A. J.*Police Officer
v. Dinshamy*

The proceedings in the case start with a record to the effect that six persons are present who are described as the accused. Then one Jayawardene is called. He is said to be the " R. K. C. R. Balapitiya, " by which I understand he is the Record-keeper of the Court of Requests of Balapitiya, and he is said to have produced a case. There is nothing to show why that record was produced. There is further evidence called. There is no journal entry in the case, and there is nothing on the record to show how the proceedings came to be initiated by the Magistrate. I take it he had information as required under section 81. If the proceedings were initiated in that manner, he should have followed the procedure laid down in section 85. From the record I gather that there are three factions: the first, third, and sixth accused forming one faction; the fourth and fifth another; and the second accused yet another faction. All these six persons have been charged, and the proceedings taken against them all together. It is quite evident that the accused must have been considerably prejudiced, because the defence of the first accused is quite distinct from that of the second, while the defence of the third and sixth are also different from the defence of the other accused. It seems to me the proceedings are vitiated by all these accused having been called upon to show cause in the one proceeding.

I, therefore, set aside the order as regards the first, third, and sixth accused, who have appealed, but my order is not to prejudice any proceedings which might rightly be taken against these accused if the Police Magistrate so desires.

I would invite the attention of the Police Magistrate to the case of *Wickremasuriya v. Don Lewis*.¹

Set aside.

¹ (1915) 1 C. W. R. 192.