

1900.  
June 6 and 12.

MENDIS v. FERNANDO.

P. C., Panadure, 7,679.

*Irregularity—Criminal Procedure Code, s. 187—Police Court proceedings.*

Where no summons or warrant was issued, but the accused appeared before the Police Court, it is the duty of the Magistrate to frame a charge under section 187 in writing, and then to read it to the accused under section 187 (3).

The object of the provisions contained in section 187 (1, 2, and 3) is to apprise the accused, by the summons, warrant or charge, of the precise accusation against him, and the omission to observe these formalities would render void all subsequent proceedings.

**A** GAINST the order of acquittal made in this case of stabbing by the Police Magistrate, the Attorney-General appealed on the ground of irregularity of proceedings.

*Walter Pereira, Acting S.-G.*, for appellant.—No summons or warrant appears to have been issued; nor charge framed under section 187 (1) of the Criminal Procedure Code; nor statement of the particulars of the offence read by the Magistrate to the accused under sections 187 (2) and 187 (3). All the evidence available for the prosecution in this case of stabbing was not recorded, as enjoined by section 190, before the order of acquittal was made. There is no entry in the record that the case for the prosecution was closed. Evidence recorded in another case, 7,676, appears to have been utilized by the Police Magistrate, without any part of it being read in evidence here.

No appearance for respondent.

*Cur. adv. vult.*

12th June, 1900, BROWNE, A.J.—

As far as I can gather what happened was this. The parties had a row in the carpenter's shed of the complainant, Thomis Mendis, who was stabbed with a chisel, while accused, Juanis Fernando, received three incised wounds and two contusions. Accused went home and sent for the police headman and complained to him against Thomis Mendis, Gregoris, and Anthony. The headman arrested Gregoris and produced him before the Police Court with a report, and proceedings bearing No. 7,676 were instituted. On the same day at 4 P.M. Thomis Mendis came to Court bringing a report from the same headman, which reads only as if it were the record of a complaint made, but not indicating any inquiry or arrest. The prosecution, the subject of this appeal, was instituted on the next day by the examination of

Thomis Mendis, but the only order made was to send him to the doctor and fix the case for the 26th. There is no record that accused was present. No summons or warrant is recorded to have been ordered, and somehow or other the accused came before the Court on the 2nd April, and again on the 9th April, on which day there was inquiry into his own complaint bearing No. 7,676, and on that day there is a record that he was required to give bail to attend the next day. He failed to do so and was produced in custody, and then the record was made: "Charge under section 315 explained [section 187 (2)], Accused pleads not guilty."

Assuming that the entry I have quoted was intended to express that the Court was proceeding as under the contingency specified in section 187 (2) of the Criminal Procedure Code, it is plain, both from the absence of any mention of issue of summons or warrant in the record and from the admission of the Magistrate in his letter of 7th May, that neither was issued, and so that clause of the section was inapplicable.

Even, however, if it was applicable, the entry should have been: "The statement of the particulars of the offence contained in the summons or warrant is read to the accused, and he is asked if he has any cause to show why he should not be convicted" [section 187 (3)]. But as it was inapplicable, it was the duty of the Magistrate to (1) frame a charge [section 187 (1)], which necessarily must be in writing, because he had also (2) to "read such charge" to him [section 187 (3)], and he did not do either of these.

The purport of these provisions is to show that the accused was apprised by the statement in either the summons or warrant served on him, or the written charge read to him of the precise accusation against him. This not having been done, the proceedings are entirely irregular, and I quash all subsequent to those of 21st March, and remit them to be proceeded with in due course.

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BROWN, A. J.

