

[IN REVISION.]

Present: Wood Renton C.J.ANTHONY APPU *v.* NOORDEEN.*P. C. Chilaw, 1,040.*

*Habitual Criminals and Licensed Convicts Ordinance, 1914, s. 6—
Non-summary proceedings for theft—Plea of guilty—Previous
convictions admitted—Conviction by Magistrate acting under
s. 152 (3), Criminal Procedure Code.*

In this case non-summary proceedings were taken for theft against accused, who pleaded guilty. Thereupon the Court Sergeant submitted a list of previous convictions, and accused admitted the same. The Magistrate then, acting under section 152 (3), Criminal Procedure Code, convicted the accused on his own plea, and sentenced him to undergo six months' imprisonment.

Held, that the Magistrate acted in contravention of section 6 of the Habitual Criminals Ordinance, 1914.

THE facts are set out in the judgment.

Dias, C. C., in support.

May 31, 1916. WOOD RENTON C.J.—

This is an application by the Crown in revision. The accused has been duly served with notice of the application, but has not appeared by counsel to-day. The accused was charged in the Police Court with the theft of coconuts. The charge was read to him. He pleaded not guilty. The Police Magistrate thereupon took non-summary proceedings against him. The accused pleaded guilty, and the Court Sergeant submitted a list of previous convictions, which the accused admitted to be correct. The learned Police Magistrate then, acting under section 152 (3) of the Criminal Procedure Code, convicted the accused on his own plea, and sentenced him to undergo six months' rigorous imprisonment. If there be no authority to the contrary, it is clear that in adopting this course

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the Police Magistrate was acting in contravention of the requirements of section 6 (2) of the Habitual Criminals and Licensed Convicts Ordinance, 1914.¹ He was still exercising the jurisdiction of a Police Magistrate, in spite of the fact that he was proceeding under section 152 (3) of the Code of Criminal Procedure. Section 6 (2) of the Habitual Criminals and Licensed Convicts Ordinance, 1914,¹ provides that, where in such circumstances as those that we have here to do with, the proceedings are summary, the Police Magistrate shall discontinue such proceedings and follow the procedure indicated in the section itself. Mr. J. S. Jayewardene as *amicus curie* kindly called my attention to the decision of Sir John Middleton in 662—P. C. Panadure, 36,404,² which was followed by my brother Ennis in 79—D. C. (Crim.) Matara,³ to the effect that a previous conviction of an accused person is not a circumstance that will entitle the President of a Village Tribunal to refer the case to the Police Court for trial, but that if, in his opinion, it was a matter rendering the case more appropriately triable by a higher tribunal, he might act under the proviso to section 28 of Ordinance No. 24 of 1889, which authorizes the Attorney-General, or a Crown Counsel, or a Government Agent having jurisdiction over the subdivision to stop the hearing of any case and to direct it to be tried by a Police Court. Those decisions, however, can have no application to a case like the present, in which the procedure has been distinctly laid down by the Legislature itself in terms with which the Police Magistrate has not complied. Mr. Dias, C. C., on behalf of the Crown, has called my attention to a decision of my brother De Sampayo in P. C. Colombo, 54,⁴ which is directly in point. Acting in revision, I set aside the conviction and sentence on the accused, and send the case back to be dealt with in due course of law in conformity with the provisions of the enactment above referred to. If the ulterior proceedings should result in a conviction, the Court of trial will no doubt take account, in passing sentence, of whatever period of imprisonment, if any, the accused may already have undergone.

Set aside.

¹ No. 32 of 1914.

² (1911) 6 S. C. D. 49.

³ S. C. M., Aug. 30, 1912.

⁴ S. C. M., May 22, 1916.