

PAARIS v. ALLIS et al.

1896.

September 3.

P. C., Negombo, 20,608.

Irregular proceedings—Trial of two persons under one charge for illicit possession or sale of arrack—Requisites prior to conviction of an offence not embodied in charge—Criminal Procedure Code, s. 226.

It is irregular, and would afford good reason for quashing a conviction, to try two persons at one trial either for possession or sale of arrack contrary to the provisions of Ordinance No. 10 of 1844.

Before a Police Magistrate convicts an accused of an offence not embodied in the charge framed, but which, from the facts admitted or proved, he appears to have committed, he must, under section 226 of the Criminal Procedure Code, frame a fresh charge, and read and explain the same to the accused. The omission to do this is a fatal irregularity.

IN this case complaint was made to the Police Magistrate of Negombo charging two people, Allis and Lorensu, with having been in possession of some bottles of arrack under circumstances constituting an offence against the provisions of Ordinance No. 10 of 1844. After recording the evidence for the prosecution the Magistrate framed a formal charge against both the accused for illegal possession of arrack, but, without framing a fresh charge, he ultimately convicted them of illicitly selling arrack, and sentenced them to undergo three months' imprisonment, and to pay a fine of Rs. 25 each. The accused appealed.

Bawa, for appellant.

3rd September, 1896. WITHERS, J., having discussed the facts, set aside the conviction and acquitted the accused on the ground that there was no evidence of sale by them of arrack. He then proceeded to deal with certain irregularities in the case as follows :—

There are, moreover, two irregularities in this case, one of which would have afforded a good reason for quashing the conviction. The offences of the two accused, whether of possession or of sale contrary to the provisions of the Ordinance, were separate offences, and should have been tried separately. Their being tried together rendered the proceedings null and void. The other irregularity I refer to is an omission to observe the requirements of section 226 of the Criminal Procedure amending Ordinance No. 22 of 1890. That, section enacts: "A police magistrate may convict an accused of any offence over which a police court has summary jurisdiction, which, from the facts admitted or proved, he appears to have committed, whatever

1896. " may be the nature of the complaint or information. The
September 3. " police magistrate, before he so convicts an accused as aforesaid,
WITHERS, J. " shall frame a charge in writing, and shall read and explain the
" same to the accused."

I can find in these proceedings no charge framed against either
of the accused of the offence of selling arrack against the provisions
of the Ordinance.
