1920.

Present : Bertram C.J.

COORE *v.* JAMES APPU.

581—M. C. Colombo, 3,151.

Criminal Procedure Code, ss. 187 and 425—Failure to frame a charge—Charge in warrant or report—Irregularity—Failure of justice—Keeping a brothel—Living on the earnings of prostitution—Systematically procuring persons for the purpose of illicit intercourse—Ordinance No. 21 of 1919—Ordinance No. 5 of 1889.

The total absence of a written charge ought not to be treated as a mere irregularity.

But where there is a charge contained in a warrant or in a report, even if in the one case the accused appears before the warrant is executed, and in the other the offence is one punishable with imprisonment for more than three months or fine over Rs. 50, the failure to frame a separate written charge may amount to nothing more than a mere irregularity, and it is the duty of the Appeal Court, under section 425 of the Criminal Procedure Code, to inquire whether in the particular case under consideration the irregularity led to a "failure of justice." Anything which has proved prejudicial to the interests of the accused in the trial should be considered to have led to a failure of justice.

Where the facts disclosed the offence of keeping a brothel under section 1 of Ordinance No. 5 of 1889, the charge in the report read to the accused was laid under section 9 of the Criminal Law Amendment Ordinance, No. 21 of 1919.

Held, in the circumstances of this case the failure to frame a written charge by the Magistrate was a fatal irregularity.

The provisions of Ordinance No. 21 of 1919 explained.

"If a person is charged with living on the earnings of prostitution, it is not right to give general evidence that he does this ; the name of the alleged person on whose earnings he is said to live must be specified.

THE facts appear from the judgment.

J. S. Jayawardene, for appellant.

Cur. adv. vult.

October 13, 1920. BERTRAM C.J.—

This case raises the question on which there have been conflicting decisions as to whether, when an accused person is brought before a Police Court, neither on a summons nor a warrant, but on a report under sub-section (*b*) of section 148 of the Criminal Procedure Code, for an offence punishable with more than three months' imprisonment or a fine of Rs. 50 (see section 187 (3)), the fact that the

Magistrate does not frame a charge as required by section 187 (1), but reads the charge from the report, is necessarily a fatal defect not curable by section 425.

This question is part of a wider question—the effect of failure to comply with the requirements of section 187 relative to the framing of charges. There are numerous decisions of this Court on the subject. They are not entirely uniform ; but the general effect is to suggest that it is now settled law that any failure to comply with these requirements is a necessarily fatal defect. All of these decisions are decisions of Judges sitting singly. Some day it will no doubt be necessary that the authority of these decisions should be considered by the Full Court. As a matter of fact, in the present case I have come to the conclusion that the erroneous procedure did, in fact, prejudice the accused. The present case, therefore, is not appropriate for a reference to the Full Court. As, however, I have investigated the history of the subject, and have collected all the authorities I have been able to discover dealing with the point, it would be convenient that I should review the whole question. This review, and any conclusion I may provisionally express, must be regarded as subject to fuller consideration when the matter is finally discussed.

The history of the subject is as follows. Our present Code *replaces the Code of* 1883 ; that Code, like the present one, was modelled upon the Code at the time in force in India. As the present Indian Code on the subject we have to consider does not materially depart from its predecessor, it will be convenient that in speaking of the Indian provisions I should refer to the sections of the present Code. Under the Indian system a distinction is drawn between " summons cases " and " warrant cases." A " warrant case " may be considered as a case relating to an offence punishable with imprisonment for a term exceeding six months (section 4 (*w*)). A " summons case " means a case relating to an offence, and not being a warrant case (section 4 (*v*)). When a Magistrate is dealing summarily with a summons case, there is no occasion for him to frame a charge at all (section 242). When the accused is brought before him, the particulars of the offence must be stated to the accused, and he must be asked if he has any cause to show why he should not be convicted, but it is not necessary to frame a formal charge. He is tried and either acquitted or convicted without any such formal charge. It is different with a warrant case. Here, too, there is no formal charge at the beginning. The Magistrate first hears all the evidence for the prosecution (section 252) ; if he finds that no case is made out, he discharges the accused (section 253). If he thinks there is a *primâ facie* case of an offence which he is competent to try, then, and then only, he is called upon to frame in writing a charge against the accused. In the final chapter of the Indian Code the omission to frame a charge is expressly dealt with

1920.

BERTRAM C.J.

Coore v. James Appu

(section 535). "No finding or sentence is to be deemed invalid merely on the ground that no charge was framed, unless in the opinion of the Court of Appeal or Revision a failure of justice has in fact been occasioned thereby." This express provision is in addition to a general clause curing irregularities (section 537), which corresponds with section 425 of our own Code.

The Ceylon Code of 1883, though it followed the general lines of the Indian Code, did not adopt the distinction between summons cases and warrant cases, but, like the Indian Code, it did not require a charge to be framed at the commencement of the trial. Section 221 declared that "when an accused appears or is brought before the Police Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, but it was not necessary to frame a formal charge." It was only if a *primâ facie* case was made out that the Magistrate was required to "frame in writing" a charge against the accused (section 224). This charge was then to be read and explained to the accused (section 225). The Indian section providing that a finding or sentence should not be invalid merely on the ground that no charge was framed unless there was an actual miscarriage of justice was retained (section 493), as well as the general section curing irregularities (section 494).

In 1890 a change of some importance was made. By Ordinance No. 22 of that year an entire new chapter was substituted for chapter XIX. of the Code, in which the provisions above discussed occur. The provision requiring the Magistrate to frame a formal charge, if he thought that a *primâ facie* case was made out, disappears. The only express provision as to the framing of a charge which is retained is section 226. This authorizes the Magistrate to convict an accused of any offence which he appears to have committed, whatever may be the nature of the complaint or information, but requires him before convicting an accused as aforesaid to frame a charge in writing. It was thought at one time, and was so held in two cases, that this meant that it was only necessary to frame a charge when the Magistrate convicted of an offence which did not expressly appear in the complaint. This question was considered in the Full Court case of *Tissera v. Foster*.[1] The three Judges, however, though in that case the conviction was set aside, expressed three different views. Burnside C.J. thought that a charge should be framed in every case; Clarence J., if I rightly understand him, thought a charge should be framed in all cases where a failure to frame one would occasion a failure of justice, and in particular in any case where the Magistrate convicts of an offence not included in the complaint; Dias J. held that a charge need only be framed in that last particular case. Burnside C.J. in giving judgment observed: "This Court is invested with the power to excuse the non-framing

[1] *(1891) 9 S. C. C. 173.*

of a charge where we may be of opinion that no miscarriage of justice has been occasioned thereby." This was the position before our present Code was passed into law.

By section 187 our present Code provides that before any summary trial takes place a formal charge must be framed. To this there are two exceptions: (*a*) Where the accused appears on summons or warrant, the statement of the particulars of the offence contained in the summons or warrant is deemed to be the charge; (*b*) where the accused appears upon a report under section 148 (*b*), and where the offence is punishable with not more than three months' imprisonment or a fine of Rs. 50, the report may be treated as the charge.

In all cases the charge or its equivalent so authorized must be formally read to the accused. At the same time the old section 493, which declared that the omission to frame a charge should not be fatal to a finding or sentence unless a failure of justice had been occasioned thereby, was struck out. The general section curing irregularities remains. (See our present section 425.) An important point to be considered in the final determination of the question now under discussion will be whether in thus striking out the old section 493 at a time when it expressly required a formal charge to be framed, the Legislature intended to declare that the failure to frame a charge where a charge is required should be a fatal defect, or whether, on the other hand, the Legislature did not consider that the terms of section 425 were sufficiently wide to cure defects in all such cases.

I will now proceed to consider the reported authorities. So far as I have been able to collect them, they are sixteen in number. There are also a certain number of unreported cases. They fall under three heads :—

(*a*) Cases of omission to frame a charge simpliciter.

(*b*) Cases where the accused surrendered before the execution of the warrant and consequently did not appear on the warrant, but where the Magistrate, instead of framing a charge, read to him the charge from the warrant.

(*c*) Cases in which the Magistrate read the charge from a report, notwithstanding the fact that the punishment for the offence was more than three months' imprisonment or a fine of Rs. 50.

I will consider these groups seriatim.

(*a*) *Failure to Frame a Charge Simpliciter.*—These cases are (1) *Mendis v. Fernando*[1]; (2) *Silva v. Aberan*[2]; (3) *Ally v. Maracair*[3]; (4) *Aratchy of Angamana v. Arumogam*[4]; and (5) *Gunewardene v. Packeer Lebbe.*[5]

The first case, *Mendis v. Fernando*,[1] was a decision of Browne J. In that case the accused came before the Court "somehow or other." The note on the record was : "Charge under section 315 explained

[1] *(1900) 4 N. L. R. 104.*
[2] *(1905) 1 Leem. 42.*
[3] *(1909) 2 Weer. S. C. D. 53.*
[4] *(1911) 6 L. L. R. 24.*
[5] *(1911) 15 N. L. R. 183.*

1920.

BERTRAM C.J.

Coore v. James Appu

(section 187 (2))." The case was obviously not within section 187 (2). Browne J. observed: "The purport of the 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 March 21, and remit them to be proceeded with in due course." It will be observed that Browne J. merely declared the proceedings irregular. He did not say that such a defect was necessarily fatal in all cases. The headnote is not warranted by the precise terms of his judgment. In *Silva v. Aberan*[1] Pereira J. held that the omission to frame a charge was an irregularity, but not necessarily a fatal defect. He found in the record something which was in all respects "tantamount to a formal charge"; he, therefore, considered the irregularity cured under section 425. In *Ally v. Maracair*,[2] Hutchinson C.J. simply said: "In a case of this kind, I am afraid that it is a fatal objection." In *Aratchy of Angamana v. Arumogam*,[3] Wood Renton J. made the first emphatic statement of a principle, which has subsequently been followed. He said: "There are numerous decisions, both Indian and local, which show that the absence of a charge altogether in cases in which the law requires that one should be framed is a fatal irregularity. Those decisions are binding upon me." Wood Renton J. here repeated what he had said in a previous case of the year 1908—*Goonewardene v. Babun* (*infra*)—which I will discuss under another head. *Gunewardene v. Packeer Lebbe*[4] is a third decision by the same Judge and in the same year (1911). Here he observed: "A formal charge is necessary, and its absence in accordance with well-known and recognized decisions will be fatal to the proceedings." It is unfortunately impossible to say what were the "numerous decisions, both Indian and local," which Wood Renton J. referred to in *Aratchy of Angamana v. Arumogam*,[3] and which he considered binding on him, or the "well-known and recognized decisions," which he referred to in *Gunewardene v. Packeer Lebbe*.[4] With regard to the "numerous local decisions," the only case on this point up to that date which I have been able to find are the three above mentioned, one of which is to the contrary effect. With regard to the Indian decisions, I can find no Indian decisions to this effect. The only one on the point which I have been able to find, *Empress of India v. Gurdu*,[5] is the other way.

(*b*) *Cases of Surrender before Execution of Warrant.*—These are (1) *Shefford v. Arumogam*[6]; (2) *Sanders v. Vally Tampan*[7]; (3) *Hendrick v. Pelis Appu*[8]; (4) *James Appu v. Egonis Appu*[9];

[1] *(1905) 1 Leem. 42.*
[2] *(1909) 2 Weer. S. C. D. 53.*
[3] *(1911) 6 L. L. R. 24.*
[4] *(1911) 15 N. L. R. 183.*
[5] *(1880) 3 All. 129.*
[6] *(1912) 1 Bal. N. C. 1.*
[7] *(1914) 1 Cooray Cr. App. Rep. 55.*
[8] *(1915) 1 C. W. R. 194.*
[9] *(1916) 3 C. W. R. 363.*

(5) *Inspector of Police v. Elaris* [1]; (6) *Silva v. Peiries* [2]; (7) *Assen Singho v. Perera* [3]; and (8) *Mudiyanse v. Appuhamy et al.*[4]

Three of these cases treat the defect as a curable defect, the remainder of them treat it as fatal, but without giving reasons. Ennis J. in *Shefford v. Arumogam* [5] said: "On the authority of many cases before the Supreme Court, this alone is fatal to the case." Pereira J. in *Sanders v. Vally Tampan* [6] considers he is bound by *Gunewardene v. Packeer Lebbe.*[7] De Sampayo J. in *James Appu v. Egonis Appu* [8] quashes the conviction, "following the decisions of this Court in previous cases." His decisions in *Inspector of Police v. Elaris* [1] and *Silva v. Peiries* [2] proceed upon the same ground, namely, previous authorities. In the three cases which are in the other direction, in *Hendrick v. Pelis Appu* [9] Shaw J. discusses the principles of the matter. He considers that there was no object in the Magistrate going through the formality of copying out the charge from the warrant before reading it to the accused, and notes that in two previous cases under this head (one unreported) it did not appear that the warrant was actually read to the accused.

Schneider J. in *Assen Singho v. Perera* [3] and in the recent case, *Mudiyanse v. Appuhamy et al.*,[4] follows the decision of Shaw J. in *Hendrick v. Pelis Appu.*[9] So far as these two groups of cases are concerned, therefore, it will be seen that there is no discussion of principles. There is merely a reference to previous cases, in which also there is no discussion of principles, and which are said to be based upon yet earlier cases, which I have not so far been able to discover.

(c) *Cases of Charge explained from the Peace Officer's Report.*— These are (1) *Goonewardene v. Babun* [10]; (2) *Deonis v. Charles* [11]; (3) *Dunuwille v. Sinno* [12]; (4) *De Silva v. Davit Appu.*[13] In *Goonewardene v. Babun* [10] Wood Renton J. followed the decision of Browne J. in *Mendis v. Fernando*, which he accepts as deciding that "any irregularity in the proceedings under section 187 should be held fatal to a conviction." In *Deonis v. Charles* [11] the same learned Judge said: "Numerous judgments of this Court, not to speak of a decision of the Privy Council on this point, make it impossible for me to hold that the omission to frame a charge even in cases in which it has caused no prejudice to the accused is other than fatal." In this judgment of Wood Renton J. there is a passage of some importance. He explains the principle of the requirement that in cases founded on police reports the Magistrate should himself

[1] *(1916) 6 Bal. N. C. 27.*
[2] *(1919) 6 C. W. R. 279.*
[3] *(1919) 6 C. W. R. 278.*
[4] *(1920) 22 N. L. R. 169.*
[5] *(1912) 1 Bal. N. C. 1.*
[6] *(1914) 1 Cooray Cr. App. Rep. 55.*
[7] *(1911) 15 N. L. R. 183.*
[8] *(1916) 3 C. W. R. 363.*
[9] *(1915) 1 C. W. R. 194.*
[10] *(1908) 1 Weer. S. C. D. 84.*
[11] *(1915) 4 Bal. N. C. 53.*
[12] *(1915) 3 Bal. N. C. 50.*
[13] *(1919) 7 C. W. R. 19.*

1920.

BERTRAM C.J.

Coore v. James Appu

frame a charge, and that where such reports are formulated as the foundation of criminal proceedings, the Police Magistrate should exercise his own discretion in the matter, and should decide what the formal charge should be after the examination directed by section 149 (*a*) of the Criminal Procedure Code. I have not been able to find the decision of the Privy Council referred to by Wood Renton J. in this judgment. Possibly it is the decision discussed below. In *Dunuwille v. Sinno*,[1] Wood Renton J. said with regard to the failure of the Magistrate in such a case to frame a charge: "It is unnecessary to give authority for the proposition that his failure to do so is fatal to the convictions and the sentences." In *De Silva v. Davit Appu*,[2] Schneider J. in a similar case said: "The omissions to frame a charge is a fatal irregularity, apart from any question of prejudice caused to the accused, as pointed out in the case of *Deonis v. Charles*[3] and other cases."

It will thus be seen that here also, apart from the very important observation of Wood Renton C.J. above quoted, the decisions do not proceed upon reasoning from principles, but upon previous authorities, the principles of which have yet to be defined.

This completes the review of the authorities. It is most unfortunate that, with the exception above noted, it is not possible to discover from these authorities on what principles they are based, as they all follow each other without explanation. It is necessary, therefore, to examine afresh the principles applicable to all these groups of cases.

I will take first the decisions under head (*a*). The principle of these decisions, though not explained, is not hard to conjecture. They are no doubt based upon the decision of the Privy Council in *Subramania Ayyar v. King Emperor*,[4] where the Committee applied the principle laid down by the House of Lords in the English case of *Smurthwaite v. Hannay*,[5] and repudiated the reasoning of Sir Francis Maclean C.J. in *In the Matter of Abdul Rahaman*.[6]

According to this decision, I take it that our customary phrase "necessarily fatal irregularity" is hardly correct. The real question is whether the defect is such as can be described as an "irregularity" at all. Nor is it correct to put it, as I have often heard it put, that such and such a defect is not an "irregularity," but an "illegality." All departures from the law are "illegalities," but there are some departures of so serious and fundamental a character that they cannot be described by the mild term "irregularity."

In *Subramania Ayyar v. King Emperor*[4] the departure from the law was of such a character that it was thought to affect the whole course of the trial and to change its very nature. This is, no doubt,

[1] (*1915*) *3 Bal. N. C. 50.*
[2] (*1919*) *7 C. W. R. 19.*
[3] (*1915*) *4 Bal. N. C. 53.*
[4] (*1901*) *25 Mad. 61.*
[5] (*1894*) *A. C. 494.*
[6] (*1900*) *27 Cal. 839.*

not the only ground on which a defect must be treated as fatal. But it is probable that the series of cases in our own Courts proceeded upon this same basis. The Legislature, deliberately departing from the previous practice, had declared that in every summary trial, when once the Court has decided to undertake it, there shall be from the commencement a definite written charge, which should be read to the accused, specifying precisely what he has to meet. This charge may be the subject of reference at any point in the trial, and must be the basis of any ultimate consideration of the case by the Court of Appeal. Such a provision may well be regarded as of so fundamental and all-pervading a character, that its non-observance ought not to be treated as a mere irregularity. No doubt there may be cases in which the facts may be so simple, the issues so plain, and the charge so inevitable that it cannot make the smallest difference to the accused whether a written charge is read to him or not. Nevertheless, it is easy to see that some provisions may in the intention of the Legislature be of the very essence of the proceedings, while others may be in the nature of formalities. The existence of a deliberately framed written charge is obviously a condition which may well be so regarded, whatever the circumstances of the particular case.

The Indian cases which declare such a defect to be curable are not necessarily relevant. In India the written charge is not essential to the proceedings. It is not universally required, but only in certain cases; and even in these cases, it is not an initial and fundamental step, but only becomes necessary at a certain stage of the proceedings.

Even, however, if we regard this as being the principle of the decisions under head (*a*) above, and as being now settled law, it seems to me that different considerations may well be held to apply to the two special cases classified under heads (*b*) and (*c*). In both these cases there is a deliberately framed written charge in existence and it is read to the accused. In the one case it is contained in the warrant, and in the other in the report. In the first case, but for the accident of the accused presenting himself before the execution of the warrant, the charge would be the basis of the trial. Instead of first copying the charge out of his notes and then reading it to the accused, the Magistrate reads it out to the accused direct. The thing is not done precisely as the law directs, but all the essentials which the law requires are there. The use of the charge in the warrant is no doubt permitted by way of exception, and the circumstances in which it exists are not within the precise limits of the exception, but they are within its general intention. So also as regards a charge read from a report. The Code allows this in certain cases. When the possible punishment is comparatively slight, it is content that the Court should use a charge formulated by some authority other than itself. When the possible punishment

1920.

BERTRAM C.J.

Coore v. James Appu

exceeds the prescribed limits, it requires the Court to bring its own mind to bear, and to exercise its own discretion upon the framing of the charge. In some cases this may be of real importance, but there may be cases in which it is of no importance at all. There may in the circumstances be only one possible charge of the simplest nature, and whatever mental application the Court brought to bear upon the subject, it might not be reasonably possible to frame another. The same may no doubt be said of the absence of a charge altogether, but I think that every one will realize that a distinction may reasonably be drawn between the two cases. It is one thing to ignore a rule altogether ; it is another thing to overstep the limits of an exception. When there is a written charge in existence, which it is open to the Court in its discretion to adopt, and when the circumstances are such that the Court will inevitably adopt it, I am not at present convinced that it is anything more than an irregularity to read this to the accused without writing it down, instead of first writing it down and then reading it.

The case under my consideration belongs to the latter category, class (*c*), and, as at present advised, I think that in such a case the defect is a mere irregularity, and that it is the duty of the Court, under section 425, to inquire whether in the particular case under consideration the irregularity led to a "failure of justice."

The expression "failure of justice" has not so far been fully discussed, but it is generally accepted that anything which has proved prejudicial to the interests of the accused in the trial should be considered to have led to a failure of justice. In this particular case, I think that the accused was prejudiced by the Magistrate reading the charges from the report, and not exercising his discretion as to the appropriate charge to be framed. The accused was charged under section 9 of the Criminal Law Amendment Ordinance, No. 21 of 1919, (*a*) with living on the earnings of prostitution ; and (*b*) with systematically procuring persons for the purpose of illicit intercourse. The facts on which the charges were based were that the police, who had been watching the accused's premises, had observed that they were the resort of women and "passengers," that on July 16, 1920, they raided the premises on the plea that they were "passengers," found inside two women and some sea-faring "passengers," who had obviously come to the premises for the purpose of illicit intercourse, and other "passengers" waiting outside with rickshaws. The accused on the demand of the police refunded to one of the "passengers" certain sums already paid him. If the Magistrate had himself exercised his discretion, he would not have framed a charge under this section, but would have simply charged the accused with keeping a brothel, under section 1 of Ordinance No. 5 of 1889. The result was that the accused, instead of having to meet this plain and familiar charge, had to meet two charges of a special nature under a provision which was

not designed to apply to cases of this sort. Apparently, owing to a misconception of the Magistrate as to the nature of the evidence admissible under the new section, general evidence was given that the house was the resort of people known to the police to be prostitutes, that the accused lived on the earnings of prostitution. These charges and this evidence can hardly fail to have embarrassed him, though, even apart from this evidence, there was ample evidence upon which he could have been convicted on the simpler charge.

Speaking generally, the Ordinance and the Ordinances which it amends do not penalize illicit sexual intercourse, except where the act takes place under circumstances which are a public scandal, or an outrageous offence to individual rights, or where it takes place with a girl under the prescribed age. Similarly, the procurement of women for an act of sexual intercourse is not punishable, except in the case of a woman under twenty years of age (see section 6). But what the Ordinance does specially penalize is the making a living out of the corruption and degradation of others. It does this in three ways :—

(*a*) It enhances the penalties for brothel-keeping (section 4) ;
(*b*) It punishes persons who live on the earnings of prostitution (section 9 (1) (*a*)) ; and
(*c*) It further punishes persons who sysetmatically procure persons of whatever age for the purpose of illicit intercourse.

With regard to (*b*), the person here aimed at is the type of character known in Europe as the " bully," that is to say, a person who has a woman under his control, and who by the use of his influence or authority compels or induces her to offer herself for prostitution, and lives wholly or in part on earnings so realized. I do not say that this provision might not in appropriate circumstances be applied to a brothel-keeper, but it is not intended for that case. Every brothel-keeper, though he may derive profit indirectly from prostitutes, does not necessarily live on the earnings of prostitution. The inmates of the brothel may be merely lodgers of the brothel-keeper. There may be an advantage in the application of this provision to brothel-keepers in appropriate cases, inasmuch as under paragraph (ii.) the Court may, when the man is convicted on an indictment, order him to be whipped. Speaking generally, however, the provision is not intended for these cases. Similarly, sub-section (1) (*b*) of section 9 is not intended for brothel-keepers. While the law ordinarily does not punish procurers or procuresses of women over twenty years of age, it does by this section punish them if they make a business of it. Here the offence is independent of the occupation of any particular premises. With regard to brothel-keeping, the occupation of the premises is the essence of the offence.

The appropriate section, therefore, for the charge is section 1 of Ordinance No. 5 of 1889. But under whatever section a charge is

1920.

BERTRAM C.J.

Coore v. James Appu

laid, the ordinary principles of evidence must be observed. If a person is charged with living on the earnings of prostitution, it is not right to give general evidence that he does this; the name of the alleged person on whose earnings he is said to live must be specified. Police officers must not be allowed to state in the witness box, except after conviction, that such and such a person lives on the earnings of prostitution, or associates with prostitutes, or that they know such and such a woman to be a prostitute. This is only admissible where the law specially allows it. If it becomes material for the Court to know whether a particular woman is a prostitute, or whether the women frequenting particular places are prostitutes, the police officer should not merely state his opinion, but should also state the circumstances within his own knowledge on which it is based, as, for example, that he has seen this or that woman walking the streets, or that he has warned her for so doing, or that she has been convicted of, or been connected with, an offence which involves prostitution. Some of the evidence, therefore, given in this case was inadmissible. That the premises were watched by the police and were seen to be the resort of women and passengers, and that on information so obtained a raid was made, is admissible to negative the possibility that the men and women found on the premises on the occasion of the raid were there merely in consequence of a casual arrangement for which the occupier of the premises was not responsible. Similarly, evidence that a previous warning was addressed to him is admissible for the same reason. The general evidence of his habits or of the habits of women said to have resorted to his house was not admissible.

The case will accordingly go back for new trial under the section I have indicated, and, as it would not be convenient that the Municipal Magistrate should himself try the case, I direct that the prosecution be transferred to the Colombo Police Court.

Sent back.