Present : Mr. Justice Wendt.

1908.
October 28.

THE KING *v.* HARIP BOOSA.

D. C. (Crim.), Kandy, 1,916.

Indictment—Competency of the District Court to go behind indictment—Warrant of commitment—Ceylon Penal Code, s. 180—Criminal Procedure Code, s. 147.

A District Court, before which an accused person is brought for trial upon a warrant of commitment regular on the face of it, and to which an indictment is presented by the Attorney-General, is not competent to inquire whether the proceedings which culminated in the committal were regularly instituted or regularly conducted.

Queen v. Kolandavail[2] and *The Attorney-General v. Appuwa Veda*[3] followed.

APPEAL by the Attorney-General from an acquittal. The facts appear in the judgment.

Walter Pereira, K.C., S.-G., for the Attorney-General.

There was no appearance for the accused, respondent.

Cur adv. vult.

[1] *(1864) 11 L. T. N. S. 252.*
[2] *(1891) 1 S. C. R. 198.*
[3] *(1907) 10 N. L. R. 199.*

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October 28, 1908. WENDT J.—

The Attorney-General appeals against the order of the learned District Judge rejecting the indictment presented by him against the two accused, on the ground that the preliminary Police Court proceedings were " vicious and incapable of affording grounds for a valid indictment." The defect relied upon by the pleader for the first accused was that the charge (under section 180 of the Penal Code) required the sanction of the Attorney-General under section 147 of the Criminal Procedure Code, but no such sanction had been given. The District Judge upheld this objection, and himself took the further objection that the complaint upon which the Police Court proceeded had not been made by the public servant concerned, viz , the Superintendent of Police, nor by an Officer to whom he was subordinate, but by a police sergeant.

In my opinion the appeal must succeed. A District Court, before which an accused person is brought for trial upon a warrant of commitment regular on its face, and to which an indictment is presented by the Attorney-General, is not competent to inquire whether the proceedings which culminated in the committal were regularly instituted or regularly conducted. It is its duty to try the accused. This point, if it was ever doubtful, has been settled since the case of the *Queen v. Kolandavail.*[1] See also *Attorney-General v. Appuwa Veda.*[2] The point was not considered in *The King v. Harmanis,*[3] the headnote to that case being misleading.

The District Judge's order is set aside, and the case sent back for trial in due course. Only the first accused has been served with notice of the appeal. He has not appeared. The District Judge's letter to the Registrar of the 26th instant informs us that, in spite of efforts made both by the Fiscal and the Police, service has not been effected on the second accused. I do not think it proper to further delay the decision of the appeal. If the attendance of the second accused can be secured, the District Judge will try him along with first accused, unless he desires to be heard in this Court against the Attorney-General's appeal; in that event the District Judge will adjourn the trial, taking adequate bail from the second accused, and will send the record to this Court, giving second accused notice of the appeal. If the attendance of the second accused cannot be secured, the District Court will proceed with the trial of the first alone.

Appeal allowed.

[1] *(1891) 1 S. C. R. 198.*
[2] *(1907) 10 N. L. R. 199.*
[3] *(1903) 8 N. L. R. 138.*