AVUNERIS DE SILVA *v.* ROMANIS.

1898.
March 25,

P. C., Balapitiya, 17,091.

Trial of offenders—Inability of judge to arrive at a decision—His duty thereon—Impropriety of requesting another judge to hear further evidence and determine the case.

Where a Magistrate heard evidence for the prosecution and defence and did not proceed to judgment, but recorded that he was not satisfied with the evidence taken, and that further evidence should be taken, and that his successor in office should give judgment after hearing more witnesses, *held* that this was a lamentable miscarriage of justice.

The proper course is to acquit the accused, if the Magistrate had any doubt as to his guilt.

THE accused entered into a contract with the complainant to peel cinnamon for the complainant during a period of twelve months commencing from 1st May, 1897, and ending with 30th April, 1898, and received an advance of Rs. 30. It was alleged that he failed to attend and work. The Police Magistrate (Mr. Gunatileke) found the accused guilty of neglecting to attend in order to peel cinnamon, in breach of section 11 of Ordinance No. 11 of 1865.

On appeal, *E. Jayawardena* appeared for the accused; *Morgan*, for complainant.

The following judgment of the Supreme Court sets out the history of the case previous to its trial by Mr. Gunatileke, and enters fully into the irregularities which necessitated the acquittal of the appellant :—

25th March, 1898. WITHERS, J.—

This is a lamentable instance of miscarriage of justice.

On the 13th September, 1897, a man who signed a year's contract for service as a cinnamon peeler was charged with having quitted his employer's service without leave on the 1st May previous. He is not tried till the 10th of March following. On that day witnesses are heard for the prosecution and for the defence, and the Magistrate (Mr. Woutersz) expresses himself as follows :—

1898.
March 25.
WITHERS, J.

"I am not satisfied with the evidence already recorded. I think "further evidence should be gone into before the case can be "decided satisfactorily. I will leave it to my successor to examine "more witnesses, if he considers necessary, and give a decision."

What an unhappy admission of inability to decide a simple case! It was the obvious duty of the Magistrate, if he had any doubt as to the guilt of the accused, to give him the benefit of that doubt and acquit him. He does not say on what point he wished further evidence, or whether that evidence was wanted for the prosecution or for the defence.

Then, what happens on the 6th December. 1898, more than a year after the institution of the proceedings? The man is tried over again, an exact duplicate of the original trial. The plaint is explained to the accused, and he claims to be tried.

The complaint was that the accused had quitted his employer's services without leave or reasonable cause on the 1st May, 1897). At the close of the prosecution the new Magistrate (Mr. Gunetileke) alters the charge to one of non-attendance at work to peel cinnamon at the time and place he had contracted to do. The new Magistrate, after hearing evidence for the accused, convicted him of that charge.

Now, it seemed to me that the most just way of dealing with this case was to hear counsel on the proceedings of the first trial; and if the respondent's counsel satisfied me that the prosecution had made out the charge on which the accused has been convicted at the second trial, I should let the conviction stand. If he was unable to satisfy me that the accused was guilty of the offence charged, then I should do what the Magistrate should have done at the first trial, and acquit the accused.

The complainant swears that the accused never attended to work on his estate on any day after signing the contract. On the other hand, the accused swears that as long as he was able to he did attend to work, and that he was obliged to desist from work owing to an affection of his eye. It was this conflict of evidence that overcame the Magistrate at the first trial. He gave up the problem in despair, and left it for his successor to solve. Now, that was not the way to administer justice. As it is very doubtful, indeed, that the accused committed any offence at all under the Labour Ordinance, I shall do now what the Magistrate should have done then, and acquit the accused. No explanation has been offered for the delay in instituting these proceedings. The offence is said to have been committed on the 1st May, 1897, but it was not till the September following that the case was instituted.

I set aside the conviction and acquit the accused.