

*Present* : Lascelles C.J. and Wood Renton J.

1914.

POLICE SERGEANT, TANGALLA, v. LATIFF.

592—*P. C. Tangalla, 1,917.*

*Possession of fresh hide—Report to Court that accused was unable to account for possession—Charge under s. 10 of Ordinance No. 14 of 1907 (s. 21 of Ordinance No. 9 of 1893).*

A report was made under section 148 (b) of the Criminal Procedure Code to the effect that the accused was found in possession of a fresh hide, for which he was unable to account. On that report summons was drawn in the same terms, charging the accused under section 21 of Ordinance No. 9 of 1893 (as amended by section 10 of Ordinance No. 14 of 1907).

Objection was taken that it was not open to the Magistrate to charge accused under the section without first calling upon accused to account for his possession of the hide.

*Held*, that the explanation of the summons was a direct invitation to him to make any explanation which he could of the circumstances under which this hide came into his hands.

"The accused denied that he ever had the hide at all, and that being his defence, the question of expecting him to explain how it came into his hands did not arise."

1914.

*Police  
Sergeant,  
Tangalla,  
v. Latiff*

**T**HIS case was reserved for argument before two Judges by Pereira J.

*Bartholomeusz*, for the accused, appellant.—The proceedings are irregular. The accused was charged under section 21 of Ordinance No. 9 of 1893, as amended by section 10 of Ordinance No. 14 of 1907. The summons in this case was issued on a report by the police, and the summons was read and explained to the accused when he came to Court as the charge in the case. Before the charge was framed or read and explained, the accused was not asked by the Magistrate to account for his possession. It could not, therefore, be said that the accused had failed to give a satisfactory account for his possession of the hide to the Magistrate at the time the charge was explained to him.

*van Langenberg, K.C., S.-G.*, for the respondent.—The explanation of the summons was in itself a calling upon the accused to account for his possession. The Magistrate is not expected to go to the accused and ask him to explain his possession. It is only when the accused comes to Court under a summons the Magistrate can ask him to account for his possession. Counsel cited *Dassanayake v. Charles*.<sup>1</sup>

July 20, 1914. LASCELLES C.J.—

In this case the appellant has appealed on the facts, and also with regard to the procedure at the trial. With regard to the facts, it seems to me that there is evidence which the Magistrate might well have believed, supported as it is by the production of the hide of the stolen animal in Court. I do not think that the contradictions in the evidence are such as would necessarily show the case to be a false one, and no motive has been suggested for the bringing of a false case against the accused. With regard to the procedure, it appears that a report was made under section 148 (b) of the Criminal Procedure Code to the effect that the accused was found in possession of a fresh hide, for which he was unable to account. On that report summons was drawn in the same terms, and the summons was explained to the accused by the Magistrate. If the case of the accused had been that he had been in possession of the hide, but that he was lawfully in possession, he would have had a direct opportunity of explaining how he came by the hide. For the explanation of the summons was a direct invitation to him to make any explanation which he could of the circumstances under which this hide came into his hands. But in the present case his defence was different. He denied that he ever had the hide at all; and

<sup>1</sup> 3 *Leader*, Pt. I. p.

that being his defence, the question of expecting him to explain how it came into his hands did not arise. I see no reason for interfering with the conviction or the sentence, and I would dismiss the appeal.

WOOD RENTON J.—

I entirely agree, and have nothing to add.

*Appeal dismissed.*

1914.

LASCELLES  
C.J.

*Police  
Sergeant,  
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