1922.

Present: Bertram C.J.

ROWEL *v.* PERERA

385—P. C. Chilaw, 12,387

Criminal Procedure Code, s. 189—Time-limit on cross examination and remarks—Right of pleader for defence to comment on evidence led for prosecution.

A Magistrate has no power to impose a time-limit either on cross examination or on the remarks of pleaders.

A pleader for the defence, when opening his case, may not only expound the evidence he proposes to lead for the defence, but may also comment on the evidence led for the prosecution.

H. J. C. Pereira, K.C. (with him *Batuwantudawa* and *Croos-Da Brera*), for appellant.

H. E. Garvin, for respondent.

August 24, 1922. BERTRAM C.J.—

I need not go into the facts of this case because it appears from the record that while the proctor for the defence was addressing the Court for the purpose of opening his case under section 189 of the Criminal Procedure Code, the learned Magistrate, doubtless

through inexperience, having observed that it was late, and that the proctor had already spoken for ten minutes, directed him to finish his remarks in one minute. The proctor, not unnaturally being aggrieved by this direction, informed the Court that he was unwilling to go on with the case. The learned Magistrate refused to hear him further, and the proctor accordingly withdrew. This procedure of the learned Magistrate cannot, of course, be justified. The Code nowhere allows the Magistrate to impose any time-limit either on cross examination or on the remarks of pleaders. I am sure that those acting as advocates will always respect requests from the Bench to be as brief and concise as their duty will permit. But for a Magistrate abruptly to impose a peremptory time-limit upon the remarks of the pleader is entirely inconsistent with the spirit of the Criminal Procedure Code and the general spirit of procedure observed in our Courts. Mr. Garvin, who appears for the respondent, tries to justify the order of the Magistrate by reference to an affidavit which has been sworn by the proctor, but which I have not admitted. He says that in the affidavit the proctor explains that he had no time to comment on the evidence for the prosecution. Mr. Garvin argues that in opening his case a pleader for the defence is not entitled to comment on the evidence for the prosecution, but must content himself with expounding the evidence he proposes to lead for the defence.

In my opinion this is a wholly untenable view of the effect of section 189 of the Criminal Procedure Code. No doubt that section is not in the same terms as section 211 of the Criminal Procedure Code, or of section 235 of the same Code. The procedure in trials in Police Court differs in certain respects from that followed in trials in the District Court or Supreme Court. Nothing is expressly said of the right of the pleader for the defence to comment on the evidence of the prosecution, but in many cases a pleader cannot effectually open his case without commenting on the evidence of the prosecution. It is impossible to believe that the Code intended to impose such an artificial restriction on advocacy.

Mr. Garvin's contention appears to me wholly untenable. Apart from this, however, the learned Magistrate does not rest his order on any such interpretation of the Code, and I feel bound to order a retrial of the case before another Magistrate.

Set aside and sent back.