

1938

Present : Abrahams C.J.

ABEYSEKERA v. GOONEWARDENE.

115—P. C. Galle, 16,715.

Charge—Written complaint by Inspector of S. P. C. A.—Appearance of accused without service of summons—Absence of charge—Fatal—irregularity—Criminal Procedure Code, ss. 148 (1), 149, 187 (1).

On a written complaint by the Inspector of the Society for the Prevention of Cruelty to Animals, who was not examined on oath, the Magistrate issued summons on the accused, who appeared before service of summons. The Magistrate thereupon charged the accused from the written complaint.

Held, that the written complaint was not a report within the meaning of section 148 (1) of the Criminal Procedure Code and that the absence of a charge was a fatal irregularity.

A PPEAL from a conviction by the Police Magistrate of Galle.

Colvin R. de Silva, for accused, appellant.

E. H. T. Gunasekera, C.C., for complainant, respondent.

Cur. adv. vult.

March 7, 1938. ABRAHAMS C.J.—

The appellant was convicted of cruelty to a bull under section 4 (1) (a) of the Prevention of Cruelty to Animals Ordinance, No. 13 of 1907. He appeals against this conviction on the ground that the proceedings against him were improperly conducted. It would appear that an Inspector of the Society for the Prevention of Cruelty to Animals stated in writing but not on oath, that the accused seriously injured the neck of a bull and thereby committed an offence in breach of section 4 (1) (a) of Ordinance No. 13 of 1907. He cited five witnesses and signed himself as "Complainant, Inspector, S. P. C. A.". On the strength of this the Magistrate appears to have issued a summons, but the summons never reached the accused who turned up in Court to answer any charge that might have been brought against him. The Magistrate then stated that he had charged the accused from the plaint, proceeded to try him and convicted him.

Now this statement in writing of the Inspector of the Society cannot be regarded as a written report from which proceedings can be instituted under section 148 (1) (b) of the Criminal Procedure Code because an Inspector of the Society for the Prevention of Cruelty to Animals is not an inquirer, a peace officer, a public servant, a municipal servant or a local board servant. It appears to me that the most that can be said of this document is that it was an unsworn complaint and as such, proceedings cannot be instituted under it, as the complainant was not examined on oath as the provisions of section 149 require. Moreover, even had the plaint been in due form, there cannot be said to have been any charge framed under the provisions of section 187 (1) if the fact of the accused having come to the Court of his own accord can be brought within the terms of that sub-section. It follows then that the accused was tried without the necessary preliminary of a charge, for there does not appear to be any provision of law under which these proceedings could be held to

have been properly conducted, and the fact that the ingredients of the offence, for which he was tried, were contained in the unsworn complaint of the Inspector of the Society does not constitute a charge framed in accordance with the terms of the Ordinance. There is then the absence of a charge and there is ample authority that the absence of a charge vitiates the proceedings and that is admitted by learned Counsel for the Crown.

The trial was illegal *ab initio* and there is nothing for me to do but to quash the proceedings and express regret that the Magistrate should not have made himself acquainted with the terms under which a trial has to be conducted in each individual case.

Set aside.
