

1920.

Present: Dias A.J.

SILVA v. FRENCH.

276—P. C. Colombo, 28,033.

Causing hurt—No marks—Trivial offence—Penal Code, ss. 314 and 88.

Where a complainant charged the accused under section 314 of the Penal Code with causing hurt, the Magistrate refused process on the ground that complainant had no marks on his face, and that the offence was one of the kind referred to in section 88 of the Penal Code.

Held, that in the circumstances of this case that process should have been issued.

THE facts appear from the judgment.

No appearance for appellant.

May 28, 1920. DIAS A.J.—

This is an appeal by the complainant, with the sanction of the Attorney-General, against an order by the Police Magistrate of Colombo refusing process in a case of hurt under section 314 of the Penal Code preferred by him against one Mr. French. The complainant stated his case on oath, and described that on a certain day he went to the shop, of which the accused was the manager, to buy some articles, and he accidentally hit against a pot of jam and broke it. He was a customer of that shop, and asked the assistant to debit the cost of the jam pot to his account, but the manager came along, hit him on the face with his hands, and asked him what business he had there. That statement disclosed the offence of causing hurt, but the Magistrate refused to issue process because the complainant had no marks on his face, and remarked that the complainant had not even a scratch, and that the matter was trifling and frivolous. The offence under section 314 of the Code does not require marks to be left on one's face before he can appeal to the Magistrate to give him redress. If what the prosecutor stated was true, and not justified by any extenuating circumstances, an offence under section 314 was certainly disclosed, which ought to have been investigated. The Magistrate appears to have justified his refusal under section 88 of the Penal Code, which says that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. But I do not think this Magistrate will agree that if he went into a shop and accidentally broke a jam

pot and had his face smacked, leaving no marks, that he ought not to complain, because no harm had been caused to him, or because a person of ordinary sense and temper would not resent such a liberty. It is perfectly clear that this is a case which required investigation, and the case will be sent back to the Magistrate to issue process and for investigation in due course.

Sent back.

1920.

DIAS A.J.

*Silva v.
French.*