1904.
November 8.

PUNCHIRALA *v.* DON CORNELIS.

P. C., Badulla, 6,219.

Criminal Procedure Code, ss. 125, 149, 152 (3)—Offence triable by District Court—Summary trial by Police Magistrate, being also District Judge—Competency of Magistrate, after recording evidence of complainant, to go on with case as District Judge.

Where a Police Magistrate, in a case of grievous hurt, recorded the evidence of the complainant and then, deeming it advisable to dispose of the case summarily in his capacity of District Judge, heard the other witnesses for the prosecution and determined the case,—

Held, that it was not competent for the Magistrate to do so.

He should first state his reasons for the opinion that the offence may be properly tried summarily, and then should re-call the complainant and hear the witnesses afresh *ab initio*.

IN this case the Police Magistrate, after hearing the complainant, recorded as follows:—

"Though the complaint includes the charge of grievous hurt, I think it advisable to dispose of the case summarily in my capacity of District Judge."

He then heard the other witnesses for the prosecution, and discharged the second and third accused. He framed charges against the first accused for offences under sections 316 and 314 heard the evidence for the defence, and convicted the first accused.

The first accused appealed.

Bawa (with him *E. W. Jayawardene*), for accused appellant.

8th November, 1904. LAYARD, C.J.—

In this case the District Judge of Badulla purported to exercise the power given to him by section 125 of the Criminal Procedure Code to try summarily an offence triable by the District Court, he being a District Judge and at the same time a Police Magistrate who was investigating the charge with a view to commitment to a higher Court. Bonser, C.J., in the case of *Queen v. Uduman* (4 *N. L. R.* 3), points out that, even if the offence was one which a Police Magistrate might try summarily, it was too late for him after hearing evidence to exercise the power given him by section 152. He adds that from the whole of Chapter XV. it is quite clear that the Magistrate is to make up his mind whether he will try summarily as District Judge or not, after hearing evidence under

section 149. Following that decision, it appears to me it was not competent for the Magistrate after taking evidence in full of the witness Punchirala (complainant) as committing Magistrate to then turn round and say, " I will treat the evidence as if I had recorded it in my capacity as District Judge." It might be different if he had recalled the complainant after he had made up his mind to try the case as District Judge.

The conviction is quashed and the case ordered to be submitted to the Attorney-General in order that he may determine what further proceedings, if any, he will direct to be taken.

I would invite the attention of the Magistrate to the decision of the Collective Court in the case of *Silva v. Silva* (*7 N. L. R. 182*), which is binding on him as well as on me. This Court has there distinctly held that it is the duty of the Magistrate, when purporting to act under section 152 (3) of the Criminal Procedure Code, to state his reasons for forming the opinion that the offence may be properly tried summarily. The Magistrate has in this case failed to conform with that ruling.