

[ASSIZE COURT.]

1947

Present : Wijewardene J.

THE KING *v.* JAYEWARDENE *et al.*

S. C. 5—M. C. Horana, 945.

Criminal Procedure Code, ss. 151 (1), 297—Evidence given by witness before issue of process—Can be read over to accused at stage of inquiry.

Section 297 of the Criminal Procedure Code enables a Magistrate to read over to the accused in the presence of the witness the evidence given by the latter under section 151 (1), proviso (ii).

ORDER made in the course of a trial before a Judge and Jury in the Kalutara Assizes, Fourth Western Circuit, 1947.

Ian de Zoysa, for the accused.

A. C. Alles, C.C., for the Crown.

November 3, 1947. WIJEYWARDENE J.—

Two persons were indicted before me in this case. Both the accused were charged with committing robbery of the property of one Kumatheris. The first accused was also charged with attempting to murder a man called Sethan in the course of the same transaction.

The non-summary proceedings were instituted in the Magistrate's Court on a written report under section 148 (1) (b) of the Criminal Procedure Code, made by a Police Officer on April 26, 1946. The same

day the Magistrate examined Kumatheris under section 151 (1), proviso (ii) of the Criminal Procedure Code and issued warrants on the two accused. The accused surrendered to Court on May 9, 1946. On July 19, 1946, the accused were present in Court and were represented by a Proctor. Kumatheris, who was re-called that day, was further examined-in-chief and cross-examined after the evidence given by him on April 26, 1946, was read over. Kumatheris died after the accused were committed to stand their trial in this Court.

The Counsel for the accused objects to the Crown Counsel relying on the evidence given by Kumatheris in the Magistrate's Court. That evidence, if duly recorded, would be relevant under section 33 of the Evidence Ordinance. The Counsel for the accused states that the evidence is not duly recorded as the evidence of Kumatheris given on April 26, 1946, was merely read over on the subsequent occasion, and he submits that the procedure adopted by the Magistrate contravenes section 157 (1) of the Criminal Procedure Code. I am unable to uphold the contention of the defence Counsel. Section 297 of the Criminal Procedure Code enabled the Magistrate to "read over to the accused" in the presence of Kumatheris the evidence given by Kumatheris under section 151 (1), proviso (ii) of the Criminal Procedure Code.

I overrule the objection of the defence Counsel.

Objection overruled.