" In the circumstances, without laying down that in a case can additional evidence be " called by the judge at the close of the trial after the case for the defence has been closed, " we are of opinion that in this particular case the course that was adopted was irregular and " was calculated to do injustice to the appellant Harris ".

If such be the true view, then the headnote to the report of Harris' case in the law reports requires modification.

I have not, however, for the purpose of this appeal to decide that question, as the facts in the present appeal are clearly distinguishable from those in *R. v. Harris*. In that case the evidence called by the Court was called after the defence had been closed. In the case now under appeal the evidence was called immediately after the close of the case for the prosecution, and it was thus open to the appellant to call evidence in rebuttal, if he were in a position to do so.

Clearly therefore, there was no injustice to the appellant in evidence being called by the Court at that stage. A situation similar to that in the case under appeal arose in the case of *Hargreaves v. Hilliam*. No report of this case is contained in any of the series of reports that are available here, but a sufficient note of the decision is given in *Stone's Justice's Manual*, 72nd edition, 1940, at pages 688 and 689. From the note it appears that an information laid by an Inland Revenue officer was dismissed by Justices upon objection made at the close of the case for the prosecution that there was no evidence of the written order of the Inland Revenue Commissioners authorising the prosecution. The prosecuting officer then offered to put in a letter, which was objected to. The Queen's Bench Division held that the Justices ought to have re-opened the case.

I am satisfied that the course taken by the Commissioner in the case now under appeal was not irregular and the appeal is dismissed.

R. v. SALAUNEUNE.

[Criminal Jurisdiction (Corrie, C.J.) March 13, 1940.]

District Commissioners Ordinance, 1876—s. 26[1]—language of the Court—evidence at preliminary inquiry not interpreted aloud—objection to validity of proceedings.

A District Commissioner conducting preliminary enquiry without the assistance of an interpreter recorded the evidence of Fijian speaking witnesses in English and " read back " to the witness the District Commissioner's translation of the record in Fijian. No English translation was made aloud in open Court.

HELD.—On objection prior to trial, that the procedure was not in conformity with s. 26 of the District Commisioner's Ordinance, 1876 but was not void.

[**EDITORIAL NOTE.**—As to the language of the Court at preliminary enquiries *vide* Criminal Procedure Code (Cap. 4) s. 189, 190. Revised edition Vol. I p. 117.]

[1] *Repealed. Vide Criminal Procedure Code, Cap. 4, ss. 189, 190.*

PRELIMINARY OBJECTION TO THE JURISDICTION OF THE SUPREME COURT on charges of carnal knowledge and attempted carnal knowledge. The facts appear from the judgment.

The Attorney-General, *E. E. Jenkins*, for the crown.

R. Townsend, for the accused.

CORRIE, C.J.—Objection has been taken by the defence to the jurisdiction of this Court on the ground that the proceedings at the preliminary inquiry held by the District Commissioner under the Indictable Offences Ordinance 1876, upon which the order of committal of the accused for trial is based, were void, in that they did not conform to the requirements of s. 26 of the District Commissioners Ordinance 1876. That section and the three immediately following sections reads as follows :—

> " 26. All judicial proceedings before district commissioners or " process whatsoever issued by such district commissioners except " as hereinafter provided shall be in the English language.
> " 27. If a witness does not understand the English language the " district commissioner shall interpret or cause to be interpreted to " him his evidence as taken down in the language in which it was " given or in a language which the witness understands.
> " 28. If the evidence is given in a language not understood by " the accused person it shall be interpreted to him in open court in " a language understood by him.
> " 29. All warrants summonses subpoenas recognizances notices " orders certificates attachments precepts and other process what- " soever may when issued to or against natives be in Fijian."

The proceedings at the preliminary inquiry therefore should have been in English ; that is to say, should have been intelligible to any person present who understood only the English language.

The procedure actually adopted was that each witness gave his evidence in Fijian, and no English translation of the evidence was given in open court, but the District Commissioner recorded the evidence in English and interpreted to the witness in Fijian the evidence as taken down.

This procedure, while satisfying ss. 27 and 28, was not in conformity with s. 26, but it does not follow that the proceedings were void, that is to say, that they were not proceedings upon which the order of committal could be founded.

The sworn depositions of the witnesses were necessarily made in Fijian as they knew no other language ; and though the depositions were not translated into English orally, they were properly recorded in English by the District Commissioner. The giving of those depositions in Fijian and the making of that English record were necessary steps in the proceedings, even if the provisions of s. 26 had been fully observed ; it is upon those depositions and that record that the order of committal rests and it cannot be maintained that there were no proceedings to support the order.

The objection therefore fails.