

POLICE *v.* RAM LAL (f/n JESWARI MAHARAJ)
 POLICE *v.* KUVARJI (f/n MORARAJI)

[Revisional Jurisdiction (Vaughan, C.J.) March 9th, 1950]

Substituted Charge—appeal against interim order of magistrate in a criminal case.

The accused were jointly charged with alternative counts of larceny and receiving stolen property.

At the trial the prosecutor withdrew the two charges and substituted two others.

Defending Counsel did not object to this course but argued when the withdrawal was effected that this was tantamount to an acquittal.

The Chief Magistrate, Suva, who tried this case over-ruled this submission.

Notice of appeal was then filed against this decision of the Chief Magistrate.

On revision.

No Counsel appeared.

VAUGHAN, C.J.—It has already been decided by this Court in Crown App. 7/1949, *Kaminieli Vunisa v. The Police*,* that no appeal lies from an order made by a Magistrate during the hearing of a criminal trial. The order in that case was one made under section 208. I associate myself with my brother Carew's finding in that appeal. Such an order may, of course, furnish grounds of an appeal against the Magistrate's final order.

The Magistrate's bounden duty was, having recorded the objections made to his ruling, to continue with the trial of the case, and if the accused refused to plead to enter a plea of "not guilty" under section 202 (4) of the Code.

I have no doubt whatever that I have power to deal with this matter in Revision, under section 361, *et seq.*, either because it is an "order" for the purposes of that section or because it is an irregularity in the proceedings which in the interests of the administration of justice needs to be corrected.

I observe with some surprise that learned Counsel, having informed the Magistrate in effect that they had no objection to the withdrawal of the two charges and the substitution of a new charge (see the affidavits put in by Counsel) then proceeded to submit that the effect of the withdrawal was tantamount to the acquittal of the accused. However, I am not concerned in this revision with the merits of the Magistrate's ruling on this matter.

The Magistrate should now cause the accused to appear before him and continue with the trial.

* See previous Appeal.