

## **RUSSIAN DIVERSION.**

### **NEW TRIAL REFUSED.**

### **WHY WERE POLICE NOT INFORMED.**

**INNISFAIL, June 6.**

Recently two Russians at East Innisfail had a thumping match, and the sequel which followed in the Innisfail Summary Court resulted in a verdict being given for defendant. The plaintiff and defendant were George Smagin, of Innisfail, laborer, and Nicholas Dvorik, of Innisfail, fisherman.

This morning application was made to Mr. A. E. Aitkin, Police Magistrate, for a new trial on the ground that plaintiff intended to adduce fresh evidence which could not, with reasonable diligence, have been discovered before the trial.

Mr. H. G. Wright (Messrs. McNamee and Wright) appeared for applicant, and Mr. M. A. Vandeleur (Messrs. Mighell, Lee Bryce and Vandeleur) for defendant.

### **JUDGMENT.**

The argument on the application having been previously heard, Mr. Aitkin said: This is an application for a new trial under section 11 of the Magistrates Court Act which sets out that subject to the provisions of the Act mentioned, and party dissatisfied with any decision of the court may, at any time within seven clear days of such decision, apply to the court for a new trial. There was further testimony adduced to show that new evidence had been discovered. I

NEW EVIDENCE HAS BEEN DISCOVERED. I have looked through all the evidence that was given before me and this is what I find: That on April 11 a crime, or an offence constituting a criminal act was committed, occasioning bodily harm. After that was committed the person injured went to the hospital, and after leaving the hospital he consulted his solicitor. Then he came to the Magistrates Court and took proceedings. Where a crime like that is committed the first thing to do is to go to the police, and if there is a prosecution for an indictable offence, and a conviction follows, section 660 provides for compensation. A new witness came along. He said he saw the assault and conversed with one of the parties, and expressed an opinion about the matter. If the injured person had taken the ordinary course, and gone to the police, that would have been diligently prosecuting his case, and trying to discover all the evidence. In this case I don't think there was sufficient diligence shown for the purpose of discovering all the evidence available, and which might have been obtained. As regards the evidence given by the new man, the previous decision was based to a great extent on what happened before the assault took place, the cause of the assault, the reason for it, and I am satisfied there is no probability of new evidence on the lines indicated affecting the decision. I shall refuse the application for a new trial.

Mr. Vandeleur: In your verdict you mentioned that on the night of April 11 there was an assault. I take it you were not actually finding there was an assault occasioning bodily harm.

Mr. Aitkin: The evidence before me showed that a man was assaulted and that bodily harm was caused. The doe-

that bodily harm was caused. The doctor's evidence proved that.

Mr. Vandeleur: Subject to whatever evidence plaintiff might have had.

Mr. Aitkin: I shall refuse the application for a new trial.

Mr. Vandeleur: I apply for one day's costs—two guineas.

Mr. Aitkin: Respondent is allowed £2/2/- costs.