

1897.
 March 23.

JAYASINGHE v. GRACIANU.

P. C., Colombo, 4,907.

Cattle stealing—Whipping—Jurisdiction of Police Court—Criminal Procedure Code, s. 16—Previous conviction—Cross-examination of accused.

A Police Court has no jurisdiction to inflict whipping in a case of theft of cattle where the offender is above sixteen years of age.

Although it is permissible under the Evidence Act to ask an accused, who is giving evidence on his own behalf, whether he has been previously convicted, yet such a question should not be allowed by the Judge unless the accused has set up his previous good character as a defence.

THE facts sufficiently appear in the judgment.

De Saram, for appellant.

Morgan, for respondent.

23rd March, 1897. BONSER, C.J.—

In this case the two appellants were convicted of stealing a cow, and sentenced, under section 368 of the Penal Code, by one of the Police Magistrates of Colombo, to rigorous imprisonment for six months and twenty lashes each. Now, it is quite clear that this sentence cannot stand. The Magistrate had no jurisdiction to award the sentence of whipping. No doubt the offence is punishable with whipping by the Penal Code, and is triable by a Police Magistrate, but section 16 of the Criminal Procedure Code provides that a Police Court shall only inflict whipping if the offender is under sixteen years of age. If the offence is considered so serious as to need whipping, it should be tried by a District Court, which has jurisdiction to inflict a sentence of whipping.

The accused gave evidence on their own behalf, and were cross-examined by the proctor who conducted the prosecution. They admitted, in answer to a question put by the proctor, that they had been previously convicted of cattle stealing. Now, although that is a question which is admissible by the Evidence Ordinance, yet I do not think that it was a question which the Magistrate ought to have allowed. If the appellants, while giving evidence on their own behalf, had appealed to their previous good character, then it would have been quite proper to ask if they had not been previously convicted. If this case had been tried before the Supreme Court no Judge would have allowed that question to be put. The danger would be that the jury might jump to the conclusion that, having once before been convicted of cattle stealing, they might be guilty on this occasion also. The evidence

of previous conviction is not relevant to the issue, which was, Were the appellants guilty on this occasion? It would be only admissible as going to their credibility or to rebut evidence of good character. Then the question was raised as to whether the fact of previous conviction did not deprive the Magistrate of his power to deal with the case summarily.

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Mr. de Saram referred to section 5 of Ordinance No. 17 of 1894, which deprives a Magistrate of the power of dealing with cases summarily where it appears there have been previous convictions of certain crimes within certain periods. Mr. de Saram argued that, it having appeared in the course of this trial that there was a previous conviction, the Magistrate ought to have made inquiries with the view to see whether he had jurisdiction or not. Section 5 presents many difficulties, and I do not intend to construe it on the present occasion. But I will, as Mr. de Saram, on behalf of his client, has asked me to do, send the case to the District Court, which clearly has jurisdiction, whereas it may be doubtful whether under the circumstances the Police Court has jurisdiction. I do so the more readily, since I think it is not improbable that the Magistrate has to some extent been influenced by the fact of previous conviction. I direct the case to be tried with the aid of assessors, who will not know of the previous conviction.

The Judge will take care to keep from them all knowledge of the antecedents of the accused, who will thus have an unbiassed trial.
