

PERERA v. ADONIS APPU *et al.*

P. C., Avisawella, P 14.

*Cattle Trespass Ordinance, 1876—Award of damages for trespass—Appeal
ability of order—Criminal Procedure Code, s. 338—Civil Procedure Code,
s. 754.*

*Per LAWRIE, J.—It is doubtful whether an appeal lies against an
award by a Police Magistrate of damages made under section 7 of “the
Cattle Trespass Ordinance, 1876.”*

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IN this case two headmen assessed the damages done by some cattle trespassing on the property of the complainant at Rs. 64.25. The report was sworn to and the Police Magistrate ordered the trespassing animals to be sold, as the owners refused to pay the damages.

The owners appealed.

H. J. C. Pereira and *H. Jayawardena*, for the appellant, contended that the procedure laid down by the Ordinance No. 9

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of 1876, as to the method of assessing damages, had not been followed.

Cur. adv. vult.

Mr. Justice LAWRIE dismissed the appeal by the following judgment:—

I am not sure that an appeal lies against an award by a Magistrate of damages made under 7th section of Ordinance No. 9 of 1876. I am of course aware that there have been many cases in which this Court has quashed proceedings and awards which professed to have been made under the Cattle Trespass Ordinance, but in which the rules of procedure enacted in the 7th section had been ignored or broken.

I refer to the case reported in *1 S. C. C. 24, 86; 3 S. C. C. 25*, and to others. In quashing these proceedings this Court prior to 1883 probably acted under the powers recognized in the 108th section of Ordinance No. 11 of 1868, and when that section was repealed by the Criminal Procedure Code it was doubted by a Police Magistrate of Trincomalee, in deciding *P. C. 500*, whether the appeal lay.

The question was considered by Mr. Justice Clarence in *8 S. C. C. 79*, and he held that an appeal lay, because the matter was civil and not criminal, and that the provisions of the Criminal Procedure Code had nothing to do with it.

The Criminal Procedure Code (406 of the old, 338 of the new) provides for appeals pronounced by any Police Court in a *criminal case or matter* and if this appeal be not, as Mr. Justice Clarence held it was not, a criminal matter, then we must turn to the Procedure Code to see if any provision be made therein for an appeal in such a case as this.

As I read the Civil Procedure Code, the 754th section provides for appeal from original Courts, and original Courts by the interpretation clause include District Courts and Courts of Requests. I take that to mean an exclusion of Police Courts.

Still there are in The Courts Ordinance recognitions of appellate jurisdiction in this Court to correct all errors of fact and law committed by Police Courts, but I find in the Civil Procedure Code no provisions as to appeals from the civil orders of Police Courts. Very much the same difficulty exists with regard to appeals from orders made under section 7 of the Cattle Trespass Ordinance, as seemed to the majority of this Court to exist in appeals from certain orders made by Police Courts in maintenance cases.

However, dealing with the appeal as it was before me and was argued on the ground that the procedure had not been

followed, I find that there was a report by a headman and an assessment of damages. The appellants were before the Police Court, and did not object to the procedure, nor so far as appears did they object to the award of damages.

I see no reason to disturb the order, objection to which was stated for the first time in appeal.

The appeal is dismissed.

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LAWRIE, J.

