

Present: Mr. Justice Middleton.

SILVA *v.* ANDRIS.

P. C., Matara, 22,467.

1907.
June 14.

Mischief—Killing a cow—Jurisdiction of Police Court—Ceylon Penal Code, ss. 411 and 412.

The offence of mischief by killing a cow is punishable under section 412 of the Penal Code and is not triable summarily by a Police Court. *Banda v. Somalia*² referred to.

THE accused was charged with mischief under section 411 of the Penal Code, in that he killed a cow worth Rs. 28, and was convicted and fined Rs. 50. He appealed.

E. H. Prins, for him.—The offence of mischief by killing a cow is punishable under section 412 and not 411 of the Penal Code; and the Police Magistrate has no power to summarily try the charge. He cited *P. C.*, Panadure, 25,165³. The Magistrate should have taken non-summary proceedings and committed the accused to the District Court.

Cur. adv. vult.

¹ *S. C. Min.*, September 15, 1898.

² (1892) 1 *S. C. R.* 26.

³ *S. C. Min.*, June 5, 1907.

1907. 14th June, 1907. MIDDLETON J.—

June 14.

After giving judgment in this case dismissing the appeal, counsel for the appellant called my attention to 154—255, P. C., Panadure, 25,165,¹ decided by my brother Grenier, in which he holds that a Police Court has no jurisdiction under section 411 to deal with a case of committing mischief by killing a cow. This point was not taken at the argument before me, nor that the Magistrate had dealt with the accused under section 409 for simple mischief, which he appears to have done. My attention was subsequently called by Mr. A. St. V. Jayewardene as *amicus curiæ* to the case of *Banda v. Somalia*,² in which Burnside C.J. held that in the case of a buffalo the 412th section, giving jurisdiction to the District Court and Supreme Court with regard to particular animals, did not limit the general jurisdiction given by the 411th section in respect of such animals, and that the two sections would confer concurrent jurisdiction in respect of mischief to the same animal. This judgment was based, as the Chief Justice said, on the rule of construction that when a statute by clear words confers jurisdiction in any particular matter, the fact that further and other jurisdiction is also afterwards conferred cannot be construed to oust the other. This principle, however, has more particular reference to the ouster of the jurisdiction of a superior Court (*Maxwell*, p. 178, 1896 edition) by new statutory enactment. The sections here were contemporaneous. In the present case the cow killed was an animal of the value of upwards of Rs. 10, and section 411 would be more intelligible if the words “ and less than Rs. 50 ” were added after the words “ Rs. 10 ” and the word “ upwards ” deleted. In *Hari Mandle v. Jafar*³ the Court, consisting of Beverley and Norris JJ., declined to follow a judgment of Scotland C.J. at the Madras sessions in 1864, but unreported, in which he was reputed to have held that a calf does not come within the term “ bull, cow, or ox ”. They accordingly held that section 429, which is similar in its wording to our section 412, specifies the more valuable of the domestic animals without any regard to age, but in respect of other kinds of animals not so specified the section would not apply unless the particular animal in question was shown to be of the value of Rs. 50 or upwards. This perhaps was the true intention of the Legislature of Ceylon, which has therefore deprived a Magistrate of jurisdiction (see schedule 1 of the Criminal Procedure Code, page 162) in the case of the animals specified in section 412. As my order of dismissal has not passed the seal of the Court, I take the opportunity of withdrawing it. I must, therefore, quash the conviction in this case and direct the Magistrate to take non-summary proceedings in the usual course.

Conviction quashed.

¹ S. C. Min., June 5, 1907

² (1892) 1 S. C. R. 26.

³ (1895) I. L. R. 22 Cal. 457.