

*Present:* Lascelles C.J.

1912.

SILVA *v.* SILVA.

716—P. C. Negombo, 18,035.

*Appeal—Final order—Village Tribunal—Jurisdiction to try charge under s. 70 of the Police Ordinance—Criminal Procedure Code, s. 338.*

In considering whether an order is a “final order” within the meaning of section 338 of the Criminal Procedure Code, regard must be had to the effect of the order.

Where a Magistrate referred a charge under section 70 of the Police Ordinance, 1865, to the Village Tribunal,—

*Held,* (1) That the Village Tribunal had no jurisdiction to try the charge ;

(2) That the order referring the complainant to the Village Tribunal was an appealable order.

**T**HE facts appear from the judgment.

A. St. V. Jayewardene, for the complainant, appellant.—The Village Tribunal has no jurisdiction to try the charge under section 70 of the Police Ordinance, 1865. [Lascelles C.J.—Can you appeal without the sanction of the Attorney-General?] The order does not amount to an acquittal. [Lascelles C.J.—The order is not a final order.] If the order stands, the Police Magistrate cannot

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again deal with the case. The Village Tribunal clearly has no jurisdiction to try the case. The order, therefore, has the effect of a final order.

No appearance for the respondent.

October 7, 1912. LASCELLES C.J.—

This is an appeal against an order of the Police Magistrate of Negombo. The accused in the case were charged under section 343 of the Penal Code with using criminal force; under section 409 with mischief; and under section 70 of the Police Ordinance of 1865 with abuse of authority as a police officer. The Magistrate heard the evidence of the complainant, and he then referred the case to the Village Tribunal as the offences appeared to be within the jurisdiction of that tribunal. From this order the complainant now appeals. Now, the only difficulty that I can see in the case is as to the question of the procedure as to whether an appeal lies against an order of this nature, for on the merits of the case I see no room for any doubt at all. A charge under section 70 of the Police Ordinance is certainly not within the jurisdiction of the Village Tribunal, and the Magistrate was, in my opinion, wrong in referring the charge of this nature to that tribunal. Then comes the question whether an appeal lies against an order of this description. I, first of all, was inclined to doubt whether the order under appeal is " a judgment or final order pronounced by a Police Court within the meaning of section 338 of the Criminal Procedure Code." But on considering the matter it seems to me that although there is doubt as to the charges under sections 343 and 409, and that it might be argued that an order transferring a charge under these sections to a Village Tribunal is not a final order, the case is otherwise as to the charge under section 70 of the Police Ordinance. In considering whether an order is a final order, regard must be had to the effect of the order. If a Magistrate transfers to the Village Tribunal a charge which that tribunal has no power to entertain, it seems to me that the order of transfer, as regards that charge, is a final order, for it finally disposes of the charge. In the present case, if the order of the Magistrate is allowed to stand, no charge can be maintained against the accused under section 70 of the Police Ordinance. I, therefore, have come to the conclusion that the order of transfer, which relates to the charge under section 70 of the Police Ordinance, is a final order, and that the order is appealable. As I have said, on the merits of the case, I think, there can be no question at all that the order made by the Magistrate is wrong. I, therefore, set aside the order of the Magistrate transferring the trial of this case to the Village Tribunal, and direct him to proceed and try the complaint in the ordinary course.

*Set aside and sent back.*