[FULL BENCH.]

1921.

Present: Bertram C.J. and Ennis and De Sampayo JJ.

SEDRIS *v.* SINGHO.

797—P. C. Panadure, 71,293.

Village Tribunal—Exclusive jurisdiction—Petty thefts—When jurisdiction of Police Court is ousted—Ordinance No. 24 of 1889, s. 28—Prosecution by police—Has Village Tribunal jurisdiction?—"Native"—Crown.

The jurisdiction of a Police Court with regard to petty thefts is not ousted, unless it is shown, not only that the property stolen exceeds Rs. 20 in value, but also that the offence can be adequately punished by a Village Tribunal.

It is within the jurisdiction of a Police Magistrate to determine whether, in his opinion, the case is one which could adequately be dealt with by a Village Tribunal; it is not necessary that it should appear on the record that the Magistrate formally addressed himself to this question.

THE accused in this case was charged in the Police Court with theft of a bull valued at Rs. 18, and convicted.

ENNIS J. referred the case to a Bench of three Judges.

E. W. Jayawardene (with him *Navaratnam*), for appellant.—The jurisdiction conferred on Village Tribunals by section 28 of Ordinance No. 24 of 1889 is exclusive (section 34). Petty thefts as defined in that section are:—

(*a*) Thefts where the property stolen does not exceed in value Rs. 20;

(*b*) Thefts which are not preceded or accompanied by violence to the person.

The relative clause, "which may be punishable by no higher punishment than a fine of Rs. 20, or rigorous imprisonment for two weeks," refers to the second part only. As soon as the Police Magistrate finds that the value of the property stolen is less than Rs. 20, he must refer the case to the Village Tribunal under section 34. He should not exercise jurisdiction, inflict punishment, and then say that the offence is not adequately punishable by the Village Tribunal.

[DE SAMPAYO J.—Is theft of cattle petty theft? It is an offence punishable with whipping under the Penal Code.]

In *Varlis v. Don Davith et al.* (428-430, P. C. Matara, 21,027)[1] accused charged with the theft of a bull worth Rs. 20 was sentenced to six months' imprisonment. But the Supreme Court held in appeal that the Village Tribunal had exclusive jurisdiction.

[1] *S. C. Min., July 7, 1920.*

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Ranghamy v. Yahapathhamy[1] does not apply, as by consent of parties it was referred to the Police Court.

If, for the sake of argument, it be taken that the relative clause applies to both parts, then the Police Magistrate must, before proceeding to try the accused, inquire whether the offence is one triable by the Village Tribunal, and, if so, must at once refer the parties to the Village Tribunal.

Jansz, C.C., for Crown, respondent.—When the complaint is made by a police officer under section 148 (*b*), Criminal Procedure Code, the Police Magistrate gets *ipso facto* jurisdiction. The word " parties " in section 28 means parties in private prosecutions, and does not apply to police prosecutions. In such prosecutions the Crown is the real prosecutor, and so Village Tribunals have no jurisdiction (*Munasinghe v. Sinnappu*[2] and *Cornelis Appu v. Endoris Appu*, P. C. Matara, 21,428[3]). Theft is a cognizable offence under the Penal Code. In *Seneratne v. William Sinno*[4] theft of an article worth Rs. 4·50 was held to be an offence of a serious nature and triable by the Police Court.

In the present case the charge should properly be under section 368, Criminal Procedure Code, which provides for whipping in addition to any other punishment. If the relative clause applies to the latter part of section 28 only, the word " which " is superfluous. Also as Village Tribunals cannot impose imprisonment, except in default of payment of fine, an accused committing theft of an article worth Rs. 20 could escape with a fine of Rs. 20. Counsel also cited *Arasaratnam v. Nallaiah et al*;[5] and *contra Carolis v. Fernando*,[6] *Appuhamy v. Louisa*,[7] and *Goonetilleke v. Punchi Singho*.[8]

E. W. Jayawardene, in reply.

Cur. adv. vult.

November 14, 1921 BERTRAM C.J.—

The question for determination is the interpretation of a paragraph of section 28 of the Village Communities Ordinance (No. 24 of 1889), namely, the paragraph defining the criminal jurisdiction of Village Tribunals with regard to " petty thefts." The terms of the paragraph are as follows :—

> " Petty thefts, that is to say, thefts where the property stolen does not exceed in value twenty rupees, or where the theft is not preceded or accompanied by violence to the person, and which may adequately be punished by no higher punishment than a fine of twenty rupees or rigorous imprisonment for two weeks."

[1] *(1920) 7 C. W. R. 245.*
[2] *(1917) 4 C. W . R. 263.*
[3] *S. C. Min., April 20, 1921.*
[4] *(1920) 7 C. W. R. 132.*
[5] *(1918) 5 C. W. R. 109.*
[6] *(1906) 1 A. C. R. 69.*
[7] *(1907) 3 Bal. 179.*
[8] *(1907) 3 Bal. 113.*

The question is, is the Rs. 20 limit absolute, or is it subject to the qualification of the final clause of the paragraph? In other words, to oust the jurisdiction of the Police Magistrate, is it sufficient to show that the property stolen did not exceed Rs. 20 in value, or must it also be shown that the offence is one which can adequately be punished by a sentence which it is within the jurisdiction of the Village Tribunal to award?

The question is one which has frequently come before this Court. Counsel on both sides have collected the various authorities bearing on the subject. We are also indebted to Mr. Charles de Silva, as *amicus curiæ*, for two authorities, in addition to those cited by counsel in the case.

The question is primarily a question of grammar. Does the relative clause "and which may adequately be punished, &c.," apply to both branches of the previous sentence, that is, both to that relating to thefts of property not exceeding Rs. 20 in value, and also to that relating to thefts unaccompanied by violence, or does it apply only to the latter? In other words, what is the antecedent of "which"? Though the paragraph is not perhaps phrased in the most happy manner possible, I conceive that there can be no doubt that grammatically the antecedent of "which" must be the word "thefts" in the first line of the paragraph. There is no other possible antecedent. To interpret the paragraph in the manner suggested by Mr. Jayawardene, it would be necessary to eliminate the word "which" altogether. The answer is, therefore, that the relative clause applies to both branches of the paragraph, and that the jurisdiction of the Police Court is not ousted, unless it is shown not only that the property stolen exceeds Rs. 20 in value, but also that the offence can be adequately punished by a Village Tribunal.

If this were not the true interpretation, the result would be indeed peculiar. The sentence of two weeks' rigorous imprisonment which the Ordinance empowers the Village President to award is only in default of payment of a fine. On the interpretation suggested on behalf of the appellant it would appear that a theft of property worth Rs. 20 could only be punished by a fine not exceeding the same amount. This is a result which the Legislature could never have intended, and it is satisfactory to find that, grammatically construed, the words it has used are not susceptible of such an interpretation.

It appears on an examination of the authorities that, with one exception, they all have proceeded upon this view. See *Carolis v. Fernando*,[1] *Nagalingam v. Hendrick*,[2] *Seneratne v. William Sinno*,[3] *Ranghamy v. Yahapathhamy Aratchi*,[4] and *Fonseka v. Pieris*.[5] The only exception is the judgment of Schneider A.J. in *Varlis v. Don*

[1] *(1906) 1 A. C. R. 69.*
[2] *(1918) 1 C. W. R. 62.*
[3] *(1920) 7 C. W. R. 132.*
[4] *(1920) 7 C. W. R. 245.*
[5] *(1920) 7 C. W. R. 266.*

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Davith et al.,[1] but in that case it does not appear that either the authorities or the question of grammatical construction was brought before the learned Judge. In *Carolis v. Fernando* (*supra*), Middleton J. did, in fact, send the case back to the Village Tribunal, but on the express ground that the case was one which might adequately be punished by a fine of Rs. 20.

This being the position, it seems clear that it is within the jurisdiction of a Police Magistrate to determine whether in his opinion the case is one which could adequately be dealt with by a Village Tribunal. But Mr. E. W. Jayawardene raises the contention that he must expressly address himself to the consideration of this question, and that it must appear on the record that he has done so. This is not in accordance with the previous decisions of this Court. Thus, in *Perera v. Salgado*[2] (which was a case of theft unaccompanied by violence), Wood Renton C.J., following a previous decision of De Sampayo J. in *Podi Sinno v. Charles*,[3] treated the fact that the Magistrate had imposed a sentence of three months' imprisonment as an indication that he was of opinion that the offence was not one that could be adequately punished by a Village Tribunal. The same opinion was expressed by De Sampayo J. in *Nagalingam v. Hendrick* (*supra*) and by Wood Renton C.J. in *R. v. Alwis*.[4] Of course, a Magistrate may be wrong in taking this view, and, if there is an appeal, his decision will be revised by this Court as in *Carolis v. Fernando* (*supra*), but I do not think it necessary that it should appear that the Magistrate formally addressed himself to the question, if the case is of such a nature as to justify his decision. In the present case the property stolen was a bull valued at the comparatively low amount of Rs. 18. Quite apart from the fact that a cattle theft can seldom be considered trivial, it seems to be unreasonable to suggest that theft of an animal worth Rs. 18 can be adequately punished by a fine of Rs. 20. I think, therefore, that the learned Magistrate rightly dealt with the same.

As we are deciding the case on these grounds, it is not necessary for us to give a decision upon a contention raised by the Crown in this case, namely, that the fact that the case was prosecuted by the police of itself ousted the jurisdiction of the Village Tribunal, on the ground that the prosecutor in such a case must be taken to be the Crown, and not therefore a "native" within the meaning of the Ordinance, or upon Mr. Jayawardene's counter contention that for the purpose of founding jurisdiction what must be considered is, who was the substantial complainant, that is to say, at whose instance did the police institute proceedings? As, however, the cases have been collected and cited, it would be well to summarize their effect, leaving a final decision for another occasion.

[1] *S. C. Min., July 7, 1920.*
[2] *(1914) 3 Bal. N. C. 47.*
[3] *(1913) 1 Bal. N. C. 17.*
[4] *(1917) 4 C. W. R. 328.*

Mr. Jayawardene's contention was examined and rejected by Wood Renton C.J. in *Burah v. Sinniah*,[1] but I am by no means sure that Wood Renton C.J. adopted the view now put forward by Mr. Jansz. Although he expresses the opinion that the contention of Mr. Allan Drieberg in that case was correct, it is not this contention which he in fact upholds, but another one, namely, that the fact that the prosecution is in the hands of the regular police itself indicates that the offence is not a trivial one, a contention which I myself should be reluctant to admit without qualification. De Sampayo J., however, in *Munesinghe v. Sinnappu*[2] treats this case as deciding that when the formal prosecutor institutes proceedings on behalf of the Crown, the Crown is to be considered the prosecutor, and the same appears to be the implication of Shaw J.'s decision in *Cornelis Appu v. Endoris Appu*.[3] So also in *Simon v. Siyatu*[4] a case of cattle trespass, Shaw J. treats "The Government Railway" as the real prosecutor. On the other hand, both this decision and the decision of De Sampayo J. in *Munasinghe v. Sinnappu* (*supra*), which was a case of theft of Crown plumbago, prosecuted by a village headman, seem to be not necessarily inconsistent with Mr. Jayawardene's contention, that it is the real and substantial prosecutor who must be looked at. Indeed, the actual *ratio decidendi* of Wood Renton C.J.'s judgment in *Burah v. Sinniah* (*supra*) seems more consistent with that contention than with that now advanced by the Crown. The matter must await further elucidation.

For the reasons above explained, I am of opinion that the appeal should be dismissed.

ENNIS J.—I agree.

DE SAMPAYO J.—

In deciding *Nagalingam v. Hendrick*[5] and *Podi Sinno v. Charles*,[6] I have taken the view that, when a case of "petty theft" is instituted in the Police Court, it is within the competence of the Police Magistrate to consider, under paragraph 2 of section 28 (criminal) of the Village Communities Ordinance, No. 24 of 1889, whether, in view of the nature of the offence and the attendant circumstances, the offence can be adequately punished by a Village Tribunal, and to try the case himself. The argument in this case has not convinced me that that view, which has also been taken by other Judges of this Court in several cases, is erroneous. It is no doubt true that proviso 3 to the above section enables the Attorney-General or Crown Counsel or the Government Agent, when a case had been instituted in the Village Tribunal, to stop the hearing of such case

[1] *(1917) 19 N. L. R. 383.*
[2] *(1917) 4 C. W. R. 263.*
[3] *S. C. Min., April 20, 1921.*
[4] *(1917) 4 C. W. R. 426.*
[5] *(1918) 1 C. W. R. 62.*
[6] *(1913) 1 Bal. N. C. 17.*

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and to direct it to be tried by the Police Court. But in my opinion the proviso furnishes an additional procedure for preventing the exercise of jurisdiction by the Village Tribunal, and does not affect the qualifying words "which may adequately be punished by no higher punishment than a fine of Rs. 20" in the definition of "petty thefts," which the Village Tribunal is given exclusive jurisdiction to try. I agree with the Chief Justice that those words govern both the previous sentences, and are not restricted to thefts committed without violence to the persons.

I therefore think that this appeal should be dismissed.

Appeal dismissed.