

Present: Dalton J.

1928.

WEERAKKODY v. DE SILVA.

589—P. C. Kegalla, 8,476.

Village Tribunal—Jurisdiction—Two offences—One within and other without Village Tribunal jurisdiction—Sanitary Board—Village Communities Ordinance, No. 9 of 1924—Penal Code, ss. 332 and 348.

A Village Tribunal may exercise jurisdiction within the limits of a Sanitary Board.

The accused was charged before the Police Court with two offences, one of which was within the jurisdiction of the Court, and the other within the exclusive jurisdiction of the Village Tribunal. He was acquitted of the former offence and convicted of the latter.

Held, that the Police Court had no jurisdiction to try the latter offence.

Where the second offence forms part of the first offence, different considerations would apply.

A PPEAL from a conviction by the Police Magistrate of Kegalla.

H. V. Perera (with *Basnayake*), for appellant.

Navaratnam, for respondent.

January 26, 1928. DALTON J.—

This matter originally came before me on December 12 last when I made an order requesting further information from the Magistrate. From the information now supplied it appears that there is a Village Tribunal at the place where the offence here was committed, but owing to the fact that that place is within the limits of a Sanitary Board, the Magistrate states the Village Tribunal has, for that reason, no jurisdiction. There is now no doubt, having regard to what the Magistrate says is the meaning of the passage in his decision referred to in my previous order, that the objection as to jurisdiction was taken in the lower Court, and the point was dealt with by the Police Magistrate.

The appellant was charged with using criminal force on the complainant "by shoving him out of a bus," an offence punishable by section 343 of the Penal Code, and further, with wrongfully

1928.

DALTON J.
 Weerakkody
 v.
 de Silva

restraining him, an offence punishable by section 332 of the Penal Code. He was convicted on the first count, and acquitted on the second count. Under the Village Communities Ordinance, No. 9 of 1924, the Village Tribunal has jurisdiction (section 55) to try the offence of which appellant has been convicted, but not the offence of which he has been acquitted. Section 61 provides that that jurisdiction is exclusive, unless any Ordinance provides to the contrary. Ordinance No. 18 of 1892 provides for the institution of Sanitary Boards, and it is clear Rambukkana, the place of the offence, is within the limits of such a Board. Section 36 provides that rules made under the Village Communities Ordinance, 1889, shall not be in force in any town or village subject to Ordinance No. 18 of 1892. These rules are kept in force by the provisions of section 32 of the Village Communities Ordinance, 1924. The Magistrate, it would seem, has interpreted section 36 as meaning that no Village Tribunal has any jurisdiction within the limits of a Sanitary Board. The Village Communities Ordinance, 1889, provides for certain rule-making powers, and all that section 36 of Ordinance No. 18 of 1892 enacts is that such rules shall not be in force within the limits of a Sanitary Board. If the act done is a contravention of such a rule, the rule is not in force in such an area. It is quite clear, however, on reference to section 9E (4) of Ordinance No. 18 of 1892, that there may still be breaches of regulations under this Ordinance which are triable by a Village Tribunal, and there is nothing in the Ordinance opposed to the jurisdiction of a Village Tribunal in respect of an offence against the Penal Code, if such offence is triable by such a tribunal. I see no reason therefore why the Village Tribunal at Rambukkana was prevented from exercising jurisdiction for the offence of which accused has been convicted. By section 61 of Ordinance No. 9 of 1924 that jurisdiction would seem to be exclusive.

It has been suggested to me, however, on the authority of the decision in *S. C. No. 668—P. C. Dandegamuwa, No. 21,428*,¹ inasmuch as the offence of using criminal force is closely connected with the offence of wrongful restraint, and both offences are part of one and the same transaction, and as the latter offence was within the jurisdiction of the Police Court, therefore the offence of using criminal force was also rightly tried in that Court. The learned Judge there does say that in respect of this contention, he would hold the Police Court had jurisdiction to try the charge in respect of which the Village Tribunal had jurisdiction, but I am not prepared to say that that case was definitely decided upon that ground, for he clearly states earlier in his judgment that it was probable, from what appeared on the record, that the accused was not a person who was subject to the jurisdiction of the Village

¹ *S. C. Minutes of November 3, 1927.*

Tribunal but was an " excepted person " (*vide* section 60, Ordinance No. 9 of 1924). It seems to me, so far as the case before me is concerned, that the only offence found to have been committed was one within the exclusive jurisdiction of the Village Tribunal. I am not prepared to hold that, because that offence is alleged to be closely connected with another offence charged but which it has been found has not been committed, the Police Court having jurisdiction to try the offence which has not been committed, the Police Court has jurisdiction to try the offence which has been committed. Having found the accused not guilty of the offence which it is admitted he has jurisdiction to try, the Police Magistrate had remaining an offence over which the Village Tribunal had exclusive jurisdiction. He was therefore without jurisdiction. If the offence in respect of which the Police Magistrate had jurisdiction and the Village Tribunal admittedly had not jurisdiction, had been committed by the accused, and the second offence was in fact found to be part and parcel of the first offence, then possibly different considerations might apply. That remains to be considered. The accused here has been found to have committed one offence, an act by itself, and in respect of that offence the Village Tribunal has exclusive jurisdiction. I am not prepared to hold that exclusive jurisdiction has been ousted, because another offence, in respect of which the Village Tribunal has no jurisdiction, which is found not to have been committed is tacked on to the charge even if that be done in good faith.

1928.
 DALTON J.
 Weerakkody
 v.
 de Silva

Set aside.