

July 21, 1911

Present : Wood Renton J.

JAYESEKERE v. DISSANAYAKE.

447—P. C. Matara, 1,135.

Forest Ordinance, No. 16 of 1907—Offence under section 9—Police Court has no jurisdiction.

A Police Court has no jurisdiction to try an offence under section 9 of the Forest Ordinance, No. 16 of 1907.

THE facts material to this report appear from the judgment.

A. St. V. Jayewardene, for the appellant.—The Police Court had no jurisdiction to try this case. The offence is one under section 9 of Ordinance No. 16 of 1907, and it is one punishable with six months' imprisonment and a fine of Rs. 500.

In the case of offences created by laws other than the Penal Code, where the Police Court is not specially given jurisdiction, it cannot try offences which are punishable with imprisonment for a term which may exceed six months, or with a fine which may exceed Rs. 100. (See Criminal Procedure Code, section 11.)

Counsel cited *Gunasekera v. Van Cuylenberg*,¹ *Ireson v. Whittle*,² *Appuhamy v. Abdul Hamidu*,³ P. C. Ratnapura, 9,025.⁴

Walter Pereira, K.C., S.-G., was heard *amicus curiae*.

July 21, 1911. WOOD RENTON J.—

The accused-appellant was charged in the Police Court of Matara with having cleared a portion of Crown forest in contravention of section 9 (f) of "The Forest Ordinance, 1907" (Ordinance No. 16 of 1907). The Police Magistrate convicted him and sentenced him to pay a fine of Rs. 100 or in default to undergo three months' rigorous imprisonment. The only point taken on behalf of the appellant is one not mentioned in the petition of appeal, namely, that the Police Court had no jurisdiction to try the offence. As the sentence passed on the accused-appellant, however, gives him a right of appeal, and as the point of law now taken on his behalf goes to the jurisdiction of the Court, and is besides one of considerable importance, I propose to deal with it. The difficulty arises in this way. The offence of which the appellant has been convicted is punishable under section 9 of Ordinance No. 16 of 1907 with imprisonment for a

¹ (1894) 3 S. C. R. 59.

² 1 C. L. R. 34.

³ (1909) 2 Leader L. R. 110.

⁴ S. C. Min., Dec. 7, 1908.

term which may extend to six months, or with a fine which may extend to Rs. 500, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid. Section 11 of the Criminal Procedure Code provides that any offence under any law other than the Penal Code shall, when any Court is mentioned in that behalf in such law, be tried by such Court. When no Court is mentioned, it may be tried by the Supreme Court or by any other Court mentioned in the second schedule, provided that (b), "except as hereinafter provided, no Police Court shall try any such offence which is punishable with imprisonment for a term which may exceed six months, or with a fine which may exceed one hundred rupees." The words "except as hereinafter provided" relate, I think, to sections 15, 16, and 17 of the Criminal Procedure Code, which respectively enable Police Courts to combine sentences of imprisonment and fine, to sentence to imprisonment in default of payment of fine, and to pass consecutive sentences in case of conviction for several offences at one trial. It would seem to follow, therefore, from the provisions of section 11, that unless the Police Court has been "mentioned" in section 9 of Ordinance No. 16 of 1907 as a Court for the trial of offences against that section, it has no jurisdiction to entertain charges under section 9 of Ordinance No. 16 of 1907, which may be punished with a fine of Rs. 500.

This very point was considered by His Lordship Sir Joseph Hutchinson C.J. in 622—P. C. Ratnapura, 9,025¹. In that case the Chief Justice upheld the objection to the jurisdiction, on the ground that no Court is mentioned in section 9 of Ordinance No. 16 of 1907, and that, therefore, the provisions of section 11 of the Criminal Procedure Code, which I have already quoted in substance, must apply. I have now had the advantage of hearing the learned Solicitor-General as *amicus curiae*, and I have no doubt that the decision of Sir Joseph Hutchinson is right. I should perhaps point out that at the end of the schedule to Ordinance No. 1 of 1910 there is an express provision that offences against other laws than the Penal Code are to be dealt with in accordance with section 11 of the Code of Criminal Procedure.

I set aside the conviction and sentence appealed against and direct the acquittal of the accused.

Appeal allowed.

July 21, 1911

WOOD
RENTON J.

*Jayasekera v.
Dissanayake*

¹ S. C. Min., Dec. 7, 1908.