

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice.

1907.  
November 4.

HENRY v. ALUVIHARE.

P. C., Matale, 113.

*Cattle trespass—Proceeding under Ordinance No. 9 of 1876—Damages—Right of appeal—Civil matter.*

An appeal lies from an order awarding damages for cattle trespass under the provisions of Ordinance No. 9 of 1876.

*Quare*,—Whether proceedings under Ordinance No. 9 of 1876 are civil or criminal in their nature?

**A** PPEAL from an order of the Police Magistrate awarding the complainant Rs. 22.50 as damages for cattle trespass.

The facts material to the report appear in the judgment.

*Wadsworth*, for the defendant, appellant.

*A. St. V. Jayewardene*, for the complainant, respondent.

*Cur. adv. vult.*

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This is an appeal, nominally about a sum of Rs. 10, really about Rs. 4.50, involving no question of the slightest importance or interest, but merely about a trifling oversight of the Magistrate. I should like to find that there is no right of appeal in such a case, but I am afraid I cannot. The appellant was summoned for allowing his cattle to trespass, and was required to show cause why he should not pay the damages. The Magistrate after inquiry assessed the damages at Rs. 22.50. The only point taken on behalf of the appellant was that the Magistrate had made a mistake as to the amount of damages.

The respondent objects that no appeal lies in such a case as this. The proceedings were taken under Ordinance No. 9 of 1876, which empowers the Police Court, where animals have been seized for trespass, to "summarily inquire into the case and . . . . . award such damages as shall have been proved to have been sustained," and also a fine payable to the Crown, if the trespass was committed in the night time; and section 8 empowers the Court to award a fine not exceeding Rs. 5 for each animal, whether any damage is proved or not.

Both the parties say that proceedings under this enactment are civil and not criminal proceedings; and they refer me to an opinion of Cayley C.J. to that effect reported in 3 S. C. C. 26 and to a decision of Clarence J. in 8 S. C. C. 79. In the later case the

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appellant had been ordered to pay damages and had also been fined under this same Ordinance; the Court nevertheless held that the proceedings were civil and not criminal, and that the right of appeal still remained under the repealed Ordinance No. 11 of 1868 and Ordinance No. 7 of 1874, which gave a right of appeal against all final judgments or sentences of Police Courts. I should have thought that proceedings in which the defendant is sentenced to a fine payable to the Crown were "criminal" and not civil proceedings. In the present case, however, damages only were awarded; and I follow the above decision, and hold that the proceedings in this case were civil.

Section 21 and 39 of Ordinance No. 1 of 1889 give to the Supreme Court an appellate jurisdiction for the correction of all errors in fact or in law committed by (amongst other Courts) any Police Court. As this is a civil matter the provisions of the Criminal Procedure Code do not apply to it; and I do not find anything in the Civil Procedure Code or elsewhere to limit the power given to this Court by Ordinance No. 1 of 1889. I therefore hold that a right of appeal exists.

On the merits I agree with the Magistrate that he had power to award such damages as he found to have been proved, and I see no ground for interfering with his assessment. But I think that, as the damages were caused by five animals and only four of them belonged to the appellant he should have ordered the appellant to pay only four-fifths of the damages. I therefore amend the Magistrate's order by substituting Rs. 18 for Rs. 22.50.

*Order varied.*