

1936

*Present : Dalton S.P.J.**JOHN v. PIRA et al.**344—P. C. Kandy, 50,495.*

Autrefois acquit—Charge of cruelly stoning a bull to death—Acquittal—Fresh charge of mischief—Penal Code, s. 412—Criminal Procedure Code, s. 330 (1).

An acquittal on a charge of cruelly stoning a bull to death under section 5 of the Prevention of Cruelty to Animals Ordinance, No. 13 of 1907, is no bar to a charge based on the same facts of causing mischief under section 412 of the Penal Code.

A PPEAL from an acquittal by the Police Magistrate of Kandy.

L. A. Rajapakse, for complainant, appellant.

Cur. adv. vult.

July 30, 1936. DALTON S.P.J.—

The three accused persons were charged by the Inspector of the S. P. C. A., Kandy, on December 13, 1935, with cruelly stoning to death a black bull, in contravention of section 5 of Ordinance No. 13 of 1907. On February 7, 1936, they were acquitted by the Police Magistrate on the ground that the evidence disclosed that the death of the animal was not painful. He stated in his order that the owner of the bull, if he wished, could take further proceedings against the accused on a charge of mischief.

On the same date John, the owner, made a complaint against the accused of killing the bull, which was stated to be worth Rs. 60 or Rs. 70, and he charged them with mischief. The matter came on a subsequent date before the Additional Police Magistrate, when objection was taken on behalf of the accused that the previous proceedings were a bar to this charge at the instance of John the owner, since they had been acquitted on the previous charge on February 7. The Additional Magistrate after argument upheld this objection and acquitted them.

John now appeals against that acquittal, with the written sanction of the Attorney-General.

The first case was launched by the Inspector of the S. P. C. A. for a contravention of a provision of the Prevention of Cruelty to Animals Ordinance, 1907, which is an Ordinance restricted to a particular class of offence. The Additional Magistrate has held that these former proceedings were also sufficient in point of law upon which to base a charge of mischief under section 412 of the Ceylon Penal Code, applying the provisions of sections 181 and 182 of the Criminal Procedure Code. Therefore, in view of the provisions of section 330 (1) of the Criminal Procedure Code, the accused were not liable to be tried again on the same facts.

I regret I am unable to agree with the conclusion come to by the Additional Magistrate. He holds that the provisions of section 181 of the Criminal Procedure Code apply, and that the three accused could have been charged in the earlier proceedings for committing mischief on the evidence adduced in those proceedings. He points out that it would appear from the facts that the "act" complained of in the earlier proceedings was the killing of the bull, which "act" was common to a charge both under section 412 of the Penal Code and under section 5 of the Prevention of Cruelty to Animals Ordinance. It is not, however, correct to say that the act complained of in the earlier proceedings was the killing of the bull. That fact was proved, but the accused were nevertheless acquitted. The act complained of there was the use of unnecessary cruelty. In the event I am unable to see how, in the words of section 181, any doubt could arise as to whether the facts which could be proved constituted an offence against the provisions of section 5 of the Prevention of Cruelty to Animals Ordinance or against those of section 412 of the Penal Code.

It would further appear that if there had been any joinder of charges in the earlier proceedings in respect of these two offences, objection might have been taken to the joinder of these charges by the accused, under the provisions of section 178 of the Criminal Procedure Code. It was held in *Saineris v. Amadoris*¹ that the exceptions mentioned in the Criminal Procedure Code (e.g., section 181) did not apply, and that the joinder of the two charges there was improper.

The appeal must be allowed, and the order of the lower Court upholding the objection must be set aside. The proceedings on the second charge will therefore be continued, and after hearing all the evidence put before him the Magistrate will proceed to adjudicate afresh.

Sent back.

¹ 3 C. W. R. 322.
