

THE QUEEN v. ALLIS.

D. C., Galle (Criminal), 12,531.

1898.
March 10.

Ceylon Penal Code, ss. 314 and 316—Hurt—Grievous hurt.

To find a person guilty of voluntarily causing grievous hurt, the offender must be proved not only to have caused that grievous hurt, but to have known he was likely to cause it.

Where a boy of 18 years kicked another of 13 years on the abdomen and caused an injury, by reason of which the latter's life was in danger for some time—

Held, that the offence of which the accused is guilty is the offence of causing hurt punishable under section 314, and not the offence of causing grievous hurt punishable under section 316 of the Ceylon Penal Code, inasmuch as there was no proof of knowledge on the part of accused that the kick was likely to cause grievous hurt.

THE complainant and accused, who were respectively 13 and 18 years of age, went a-fishing and quarrelled with each other, in the course of which the accused kicked the complainant on the abdomen. The kick produced puffiness and pain in the stomach and retention of urine. The doctor deposed that the boy's life was in danger for nearly a week.

The accused was committed for trial before the District Court of Galle, and was there indicted for grievous hurt under section 316 of the Penal Code.

The District Judge found the accused guilty under that section and sentenced him to three months' rigorous imprisonment.

The accused appealed.

Bawa, for appellant.

Chitty, Acting C.C., for the Crown.

10th March, 1898. LAWRIE, J.—

The accused, a boy of 18, had a quarrel with a younger boy of 13. He kicked him. There was no external mark, but probably the younger boy's bladder was fully distended. The result of this comparatively trifling kick was that the boy suffered from retention of urine, and his life was in danger for a little time.

1898.

March 10.

LAWRIE, J.

I cannot hold this to be grievous hurt. To be guilty of voluntarily causing grievous hurt the offender must be proved not only to have caused that grievous hurt, but to have known he was likely to cause it.

There are some often-quoted cases of death from rupture of the spleen caused by a comparatively slight blow given by one who was ignorant that the person struck was diseased (see *Starling's Commentary on sections 219-333* and *Mayne's Criminal Law of India, chapter IX., sections 397-398a*). I follow these authorities.

I regard this case as little more than an accident. No doubt boys should not kick each other, especially a big boy should not kick a boy smaller than himself, but we must not punish school boy fights by imprisonment at hard labour.

I set aside the conviction under section 316. I find the accused guilty under section 314, and I order him to pay a fine of Rs. 10, or simple imprisonment for seven days.

