

POLICE *v.* TEVITA NIKO

[Revisional Jurisdiction (Vaughan, C.J.) June 30th, 1951]

S. 195 *Criminal Procedure Code*—*whether a juvenile may be tried in his absence.*

The accused who was a juvenile was charged with the offence of cruelty to animals, contrary to section 200 of the Penal Code. The 2nd Class Magistrate at Ba heard the case in the absence of the accused, found the case proved and remanded the accused under the provisions of section 7 (8) of the Children and Young Persons Ordinance.

On revision—

HELD.—The provisions of the Criminal Procedure Code permitting the trial of a person in his absence do not apply to the trial of a juvenile.

[EDITOR'S NOTE.—Section 7 (8) of the Children and Young Persons Ordinance reads as follows:—

“(8) If the child or young person admits the offence or the court is satisfied that it is proved, and the Court decides that a remand is necessary for the purpose of inquiry or observation, the Court may cause an entry to be made in the Court register that the charge is proved and that the child or young person has been remanded. The Court before which a child or young person so remanded is brought may, without further proof of the commission of the offence, make any order in respect of the child or young person which could have been made by the Court which so remanded the child or young person.”]

Cases referred to:—

Garnett v. Bradley (1878) 3 A.C. 944.

Lancashire Asylums Board v. Lord Mayor and Others of Manchester [1900] 1 Q.B.D. 458.

B. A. Doyle, Q.C., Attorney-General, for the complainant.

The accused was not represented.

VAUGHAN, C.J.—The accused, a juvenile aged some 16 years, was charged before the learned Magistrate sitting at Raki Raki, with cruelty to animals, section 200 of the Penal Code. The learned Magistrate purporting to act under section 195 of the Criminal Procedure Code heard the evidence in the absence of the accused and then made an order under section 7 (8) of the Children and Young Persons Ordinance (Cap. 6) “remanding” the accused for inquiry. He then applied to this Court for the case to be transferred under section 72 of the Code to Taveuni where the accused now is. This application has already been refused because I do not consider that section 72 gives this Court any power to transfer a case for sentence only and also because I do not consider that the Magistrate has power to make an order “remanding” an accused person in his absence. The more important point raised by these proceedings however is whether in view of the provisions of the Children and Young Persons Ordinance (Cap. 6) section 195 of the Criminal Procedure Code gives a Magistrate power to hear a case against a juvenile in his absence.

The learned Attorney-General to whom I am indebted for arguing this point before me, has submitted that the provisions of the Children and Young Persons Ordinance do not necessarily (vide section 7 (1)) require that an accused person should be present at his trial and are not therefore inconsistent with the provisions of the Criminal Procedure Code which permit a case in certain circumstances (section 91 and section 195) to be heard and determined in the absence of the accused. Furthermore, he submits, if there is any repugnance that the provisions of the Criminal Procedure Code being later in time than the Children and Young Persons Ordinance must prevail. However, I have formed the opinion that these considerations are outweighed by the principles which must be applied to the interpretation of the provisions of a general Act where they appear to be inconsistent with those of a special Act dealing with the same subject, as I think they are in this case. In my opinion the provisions of Cap. 6, particularly sections 3, 7 (particularly subsections (7) and (10)) clearly require that a juvenile should be personally before the Court when on his trial, and following the principles laid down in *Garnett v. Bradley* (1878) 3 A.C. 944 and applied in the case of the *Lancashire Asylums Board* [1900] 1 Q.B. 458, 471. I find that the provisions of the Criminal Procedure Code permitting the trial of a person in his absence do not apply to the trial of a juvenile.

The proceedings before the lower Court are quashed.