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be admitted, which is a point I put for decision, it would follow that Second Class Subordinate Magistrates have jurisdiction to deal with offences under Sec. 13, for they are officers having criminal jurisdiction authorised to receive and try charges without reference by the Magistrate." * * *

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The latter portion of Sec. 13 of Act III. of 1857 (a) having been repealed by Act XVII. of 1862, the offences created by that section may be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure, and in this case the Second Class Subordinate Magistrate having passed a sentence within his power, the proceedings are regular.

Oct. 9.

REG. v. LINGANA' bin GIUBANA' and others.

Act III. of 1857, Sec. 18—Pigs—Public Road—Damage—Trespass—Mischief.

In the case of a conviction by a Subordinate Magistrate, under Sec. 18 of Act III. of 1857, of a person who, through neglect, permitted a public road to be damaged, by allowing his pigs to trespass thereon:—

Held, on a reference by the District Magistrate, that the conviction was not illegal, because the land damaged was a public road; as the right to use a public road is limited to the purposes for which the road is dedicated.

THE record and proceedings in this case were sent for, on the following reference by J. Elphinston, Acting District Magistrate of Cánará:—

“The Subordinate Magistrate of Haliál last month fined a man, under Sec. 18 of Act III. of 1857, because his pigs were, by his neglect, permitted to damage the public road.

“The Assistant (Full Power) Magistrate, on the Sub-Magistrate's Criminal Return, objects to this section having

(a) Sec. 13.—“Every person who shall forcibly oppose the seizure of cattle doing damage to land, or to crops or other produce of land, or shall forcibly rescue the same after seizure, either from a pound or from the seizer, when conveying or about to convey them to a pound, shall be liable for each offence to imprisonment, with or without labour, for a period not exceeding six months, or to a fine not exceeding five hundred Rupees, or to both. [*Offences under this Section shall be dealt with by the Police Officers according to the provisions of * * * and Sec. XLIII., Reg. XII., 1827, of the Bombay Code.*”—*Repealed.*—ED.

been quoted, because it refers to trespass, and the pigs could not be held to be trespassing when on the public road; and suggests that Sec. 425 of the Indian Penal Code was the proper section to quote.

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“It, however, appears, from the wording of this section, its illustrations and explanations, that to have committed mischief, it is not sufficient that the accused should have permitted the destruction or damage of property, but that he must have intended to cause damage to some person or to the public; and this element of criminal intent is wanting in the case in point, which was one of simple neglect, though damage was caused thereby.

“I, therefore, respectfully desire to be informed, in case of damage to the public caused by neglect on the part of the owners of cattle or pigs, whether the owners are liable under Sec. 18 of Act III. of 1857 (a), or under Secs. 425 and 426 of the Indian Penal Code.”

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Magistrate should be informed that the conviction is not illegal. The right to use a public road is a limited one; and if the road is found to have been used for other purposes than those allowed, there is a trespass.

(a) Sec. 18 :—“Any person, being an owner or keeper of pigs, who, through neglect or otherwise, shall damage, or cause or permit to be damaged, any land, or any crop, or produce of land, by allowing pigs to trespass thereon, shall be liable for such offence to a fine not exceeding ten Rupees. All sums recovered under this and the last preceding section may be appropriated, in whole or in part, to compensate the complainant for damage proved to the satisfaction of the Magistrate.”