

MALHAMI MUHANDIRAM v. JUANISA *et al.*

*P. C., Ratnapura, 10,804.*

*Gemming without license—Criminal trespass—Section 247 of the Penal Code—Evidence necessary to support charge of criminal trespass—Ordinances No. 5 of 1890 and No. 10 of 1894.*

Gemming without a license on the bank of a river flowing along the property of a private owner is not punishable as criminal trespass under section 427 of the Penal Code without proof that entry on such land was made with intent to commit an offence as defined in section 38 of the Code to intimidate, insult, or annoy any person in possession of such property.

Unlicensed gemming on lands other than Crown property is punishable under Ordinance No. 5 of 1890, amended by Ordinance No. 10 of 1894.

THE complainant charged the defendants with having committed criminal trespass on a certain land of which he had the leasehold, and theft by opening gem mines therein and stealthily removing gems, in breach of sections 433 and 367 of the Penal Code.

It was proved that the accused had a pit by the edge of the river which skirted the land in question, and that water was baled from the pit into the river, whence it was contended that the pit was in the land, and that the accused working in the pit were guilty of criminal trespass.

The Police Magistrate found accordingly, and sentenced each of the accused to pay a fine of Rs. 10, under section 433 of the Penal Code.

On appeal there was no appearance of counsel for appellant or respondent.

28th May, 1895. LAWRIE, A.C.J.—

Is unlicensed gemming on the sandy and gravel banks of a stream a criminal trespass on the property of the owners of the ground adjoining the stream?

It is so, if gemming be an *offence* as defined in section 38 of the Penal Code, or if the entry on the land be done to intimidate, insult, or annoy the person in possession of the property.

There are no facts proved from which an intention to intimidate, insult, or annoy can be inferred.

The meaning of the word “offence” in section 427 of the Penal Code is defined in section 38 as *denoting a thing punishable in Ceylon under the Penal Code, or a thing punishable under any other law with imprisonment for a term of six months or upwards, whether with or without fine.*

Gemming without a license is not an offence under the Code. It is an offence under Ordinance No. 5 of 1890 amended by Ordinance No. 10 of 1894. But for a first offence the punishment is not more than three months, and hence the entry on a land for the purpose of gemming is not criminal trespass. It must be prosecuted and punished under Ordinance No. 5 of 1890.

I set aside the conviction and sentence, and acquit the accused.

