Present: Mr. Justice Wendt and Mr. Justice Wood Renton.

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SINNATURAI VANNIAH *v.* AHAMADO LEVAI *et al.*

P. C., Batticaloa, 2,136.

" *Land at the disposal of the Crown* "—*Proof—Onus—Presumption—Amendment of substantial provision—Rules made under such provision—Construction of statute—Ordinance No.* 10 *of* 1885, *ss.* 3, 44, *and* 72—*Ordinance No.* 1 *of* 1892, *s.* 14 (1).

Held, that in a prosecution for " felling and sawing timber on land at the disposal of the Crown without a permit " under the rules made under Ordinance No. 10 of 1885 the same degree of proof that the land is " land at the disposal of the Crown " is not required when the ownership of the land on which the offence is alleged to have been committed is not in dispute as that which may be necessary if the question whether it is Crown or private property forms a main issue.

Held, that where there is no serious contest as to title in a prosecution under the Forest Ordinance the evidence of forest officers and police headmen that the land on which the offence was committed was Crown land was sufficient proof that the land was land at the disposal of the Crown.

WOOD RENTON J.—To hold otherwise would be to reduce the penal provisions of the Forest Ordinance to a nullity.

Nugapitiya Mohandiram v. Sudalayandi (1 *N. L. R.* 102) and *Amarasekera v. Baiyya* (3 *Browne* 161) distinguished.

(1) (1896) 2 *Ch.* 336.

(2) (1837) 3 *Menz.* 79.

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Section 14 (1) of "The Forest Ordinance, 1892"; (No. 1 of 1892) provides that in section 44 of the Ordinance of 1885 the term "timber" shall, unless the context otherwise requires, "include timber cut in any land or property, whether the property of the Crown or any private individual."

Held, that this section of Ordinance No. 1 of 1892 applies to the rules framed under section 44 of Ordinance No. 10 of 1885 as well.

WOOD RENTON J.—If the amendment of section 44 by the Ordinance of 1892 is not to apply to the rules made under it, the amending provisions would be entirely nugatory.

Held, that under section 72 of Ordinance No. 10 of 1885, whenever a question arises as to whether any timber or forest produce is the property of the Crown, there is a presumption in favour of the Crown that it is the property of the Crown until the contrary is proved.

WOOD RENTON J.—If a *prima facie* case is made out by the accused, the *onus probandi* will be shifted, and the Crown will be required to give strict proof of all the elements indicated in section 3.

WOOD RENTON J.—The Legislature has drawn a distinction between mere trespassers and persons asserting substantial claims of title. While the trespasser neither receives nor deserves any protection, the rights of the serious claimant of title are amply protected by section 72.

APPEAL from a conviction under Ordinance No. 10 of 1885.

The facts and arguments sufficiently appear in the judgment of Wood Renton J.

Bawa, for the accused, appellants.

Van Langenberg, A.S.-G., for the Crown.

Cur. adv. vult.

30th March, 1906. WOOD RENTON J.—

The two appellants were convicted in the Police Court of Kalmunai—first, of having felled and sawn Crown timber to the value of Rs. 200, in the proclaimed forest of Kallovadiya in the Batticaloa District, without a permit, in contravention of rule 14 of the rules of 19th January, 1887, made under "The Forest Ordinance, 1885" (No. 10 of 1885), and published in the *Government Gazette* of 21st January, 1887; and secondly of having removed such timber in contravention of rule 2 of the rules of 30th April, 1900, made under the provisions of chapter V. of the Forest Ordinance, and published in the *Government Gazette* of 4th May, 1900.

The learned Police Magistrate sentenced each of the appellants to a fine of Rs. 100, or in default to six months' rigorous imprisonment on the first count, and to a fine of Rs. 25, or in default one month's rigorous imprisonment, on the second. Nine other men

were tried along with the accused on the same charges. As against four of these, the complainant did not press for punishment. The remaining five were convicted on the second count alone, and sentenced each to a fine of Rs. 10 or in default one month's rigorous imprisonment.

They do not appeal.

On behalf of the present appellants, Mr. Bawa took a number of points, which are, however, practically reducible to two. We shall refer to the evidence, so far as it is material, in dealing with these objections. In the first place, he contended, as matter of law, that the burden of proving, and of proving strictly by evidence of a kind to which we shall refer immediately, that the land on which the timber in question had been cut, and from which it had been removed, was " land at the disposal of the Crown " within the meaning of section 3 of " The Forest Ordinance, 1885 " (No. 10 of 1885), rested on the prosecution, and, in the present case, had not been discharged. This objection applies to both counts in the plaint. In the second place, he said that, even assuming that his point as to the burden of proof was bad, there was no evidence to substantiate the charge of felling and sawing. We shall deal with these objections in turn. On the question of the burden of proof, Mr. Bawa put his case in this way. Where a forest offence is charged it rests with the prosecution to make out affirmatively that the land on which it is alleged to have been committed is " land at the disposal of the Crown. " The evidence by which that *onus probandi* is satisfied must be authentic evidence that the land in question is land in respect of which no person has acquired any right by written grant or lease from the British, Dutch, or native Governments, or any right as against the Crown by a certificate of no claim, and which has not been registered as temple lands (No. 10 of 1885, section 3). Statements by police vidanes and forest officers on these points—and no other evidence was forthcoming in the present case—are of no probative value. In support of these contentions, Mr. Bawa relied on the following authorities: *Nugapitiya Mohandiram v. Sudalayandi* (1); *Amarasekera v. Baiyya* (2); 647, *P.C., Kurunegala* (3); 596, *P.C., Tangalla*, 20,068 (3); 393, *P.C., Badulla* (4).

In our opinion, however, these cases are clearly distinguishable from the one before us. In each of them there was a serious contest as to whether the land in question was Crown land or not. Here no such issue was raised. The learned Police Magistrate, indeed;

(1) (1895) 1 *N. L. R.* 102.
(2) (1900) 3 *Browne* 161.
(3) *S. C. Min.* 12*th October*, 1904.
(4) *S. C. Min.* 13*th October*, 1904.

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says that the accused admitted the land to be Crown land; and the language used by some of them at least in giving evidence is capable of bearing that construction. In any even it is abundantly clear that the fact that Kallovadiya forest is Crown land was in no way contested in the Court below. The substantial defence there was that the accused had been the victims of a false charge, and the petitions of appeal are equally innocent of any suggestion of the ingenious plea which was put forward at the argument on their behalf. Even assuming that in prosecutions for forest offences the burden of proof on the point now in question does rest on the complainant, the cases cited by Mr. Bawa are no authorities for holding that the same degree of proof is to be exacted when the ownership of the land on which a forest offence is alleged to have been committed is not in dispute as that which may be necessary if the question whether it is Crown or private property forms a main issue. In the present case the Police Magistrate had before him the evidence, unchallenged in cross-examination, of a police vidane and a forest officer to the effect that Kallovadiya forest was Crown land. The forest officer further stated that he was himself, as such, in charge of the very timber now in question. Under the circumstances of this case this evidence was sufficient to satisfy any burden of proof that lay on the prosecution. To hold otherwise would be to reduce the penal provisions of the Forest Ordinance to a nullity. Moreover as regards the second count in the plaint, Mr. Bawa's point as to the burden of proof is, we think, bad on another ground. That count is based on rule 2 of the rules of 30th April, 1900, which are made section 44 of "The Forest Ordinance, 1885." It prohibits the removal without a permit of forest produce or timber. Now "The Forest Ordinance, 1892" (No. 1 of 1892), provides (section 14 (1)) that in section 44 of the Ordinance of 1885 the term "timber" shall unless the context otherwise requires, "include timber cut in any land or property, whether the property of the Crown or any private individual." It would seem, therefore, that in the present case no question as to the ownership of the land could arise. Mr. Bawa argued, however, that the Ordinance of 1892 had merely amended section 44 and had left the rules made under it unaffected. There are, in our opinion two answers, each of them a conclusive answer, to this argument. Section 44 of the Ordinance of 1885 provides for the making of rules, and for nothing more. If the amendment of that section enacted by the Ordinance of 1892 is not to apply to the rules made under it, the amending provisions of section 14 (1) of the Ordinance of 1892 are entirely nugatory. By a well recognized rule of statutory

interpretation we are bound to avoid that result if we can; and this duty is a peculiarly incumbent one where, as here, a natural construction, which will make section 14 (1) of the Ordinance of 1892 effective, lies close at hand. The interpretation of section 14 (1) which Mr. Bawa asks us to adopt is obnoxious to another, and equally fatal, objection. Even if it could be made operative, it would involve the creation of one of those inconsistencies between rules and the statute under which they are made which the Legislature has directed rule-making authorities to avoid ("The Interpretation Ordinance, 1901"—No. 21 of 1901, section 11 (1) (*c*)), and which it cannot itself be presumed to have intended. In view of our conclusions on these issues there is no need for us to go further in regard to this part of the case. But if it had been necessary to decide the point, we should have been disposed to hold that section 72 of "The Forest Ordinance, 1885," would apply here; that section, the effect of which has not so far as we are aware been considered in any case that has hitherto come before the Supreme Court, provides as follows:—

"When in any proceedings taken under this Ordinance, or in consequence of anything done under this Ordinance, a question arises as to whether any timber or forest produce is the property of the Crown, such timber or produce shall be presumed to be the property of the Crown until the contrary is proved."

Mr. Bawa contended that the prosecution in the present case was a "proceeding taken under" the Criminal Procedure Code, and not "The Forest Ordinance, 1885." He argued further that section 72 applied only to the special classes of proceedings indicated in chapters VI. and VII. of the Ordinance. We are not prepared to agree with either of these contentions. The word "under" in the clause in question we take to mean "by virtue of," and section 72 extends, in terms, to the whole Ordinance, and must be held to apply also to offences created by rules (see the definition of "forest offence" in section 3). Where the fact of Crown rights of property in forest produce or timber, or in the land from which such produce or timber is taken, has still to be alleged in prosecutions under the Ordinance of 1885 (and, as we have seen, Ordinance No. 1 of 1892 has excluded that element from the *facta probanda* in a large category of cases), it seems to us that the Legislature intended to draw, and has drawn, a distinction between mere trespassers and persons asserting substantial claims of title. Both are in the same position in this respect that, in virtue of section 72, there is a presumption of fact against them. But whereas the trespasser neither receives nor deserves any protection, section 72

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amply secures the rights of the serious claimant of title. From our experience of land cases on the civil side we feel no hesitation in saying that where any real contest as to title is involved, little difficulty will be found in making out such a *prima facie* claim as, under section 72 of the Ordinance of 1885, will shift the *onus probandi* and put the Crown to the strict proof of all the elements indicated in section 3. It appears to us that this construction of the Ordinance at once safeguards private rights of property and secures the almost equally desirable end of the prompt and certain punishment of offenders of the class to which the present appellants belong.

In regard to Mr. Bawa's last point, it is sufficient to say that the carts in which the appellants were removing the timber in question were traced directly back by their tracks by the police vidane to recently cut stumps in the Crown forest. This evidence, taken in conjunction with the other proved facts in the case, justified a conviction on the first count in the plaint.

The appeal is dismissed.

WENDT J. agreed.