Present : Bertram C.J.

1922.

THE MUDALIYAR OF RAYIGAM KORALE *v.* SINNAPPU.

341—P. C. Panadure, 74,526.

Forest Ordinance, 1909—Land at the disposal of the Crown—Land in possession of accused—Investigation of title by Crown—Claim rejected—Purchase by accused—Payment by instalments—Only one instalment paid—Cutting of trees by accused—Charge under the Forest Ordinance.

The accused was in possession of a piece of land for several years, and planted it with coconut, jak, &c. The Government Agent investigated the title to this land and rejected the claim of the accused, and accused bought it from the Crown on terms that he should pay for it by instalments. He paid only one instalment, and did not pay the others. Accused was charged under the Forest Ordinance for cutting down some trees.

Held, in the circumstances, the charge under the Forest Ordinance was wrong. "He (counsel for the Crown) urges that the accused has admitted the Crown's title by becoming the purchaser, and that as he has not completed the payment of his instalments, the land is still Crown land. Being Crown land it is land at the disposal of the Crown, and consequently forest. I need only say that this is not the kind of case in which the Forest Ordinance was intended to apply. The word 'forest' must be read in connection with the title to the Ordinance and its general object.

THE facts are set out in the judgment.

Wijemanne, for the appellant.

Jansz, C.C., for the Crown.

September 29, 1922. BERTRAM C.J.—

This is a prosecution under the Forest Ordinance, or rather under a rule made in pursuance of that Ordinance. I am not clear whether the rule was produced before the Magistrate, but it is always most important in these forest cases that the Court should have before

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BERTRAM C.J.

The Mudaliyar of Rayigam Korale v. Sinnappu

it the rule in respect of which it has to adjudicate. As I understand the facts, the person now charged had for many years cultivated this land, and he appears to have been under the impression that he had title to it. Some time ago the Crown investigated the position of this land, and the accused put before the Government Agent all the considerations on which he relied in the case. The Government Agent did not accept them, and the land appears to have been sold to the present accused on terms that he should pay for it by instalments. He paid one instalment, but has not paid the others. The land when put up for sale in 1920 was described as being wholly planted with coconut, arecanut, and jak, one to twenty years old. Although he did not pay his instalments, he remained in possession of the land, and lately he has been cutting down some trees. The Crown now prosecutes him for an offence under the Forest Ordinance. There is nothing to show that this land is forest land in the ordinary sense. There is no evidence that it ever was forest land. But Mr. Jansz, who appears for the Crown, relies upon the definition of " forest " in section 3 of the Forest Ordinance, No. 16 of 1907, that is, that " forest " means " all land at the disposal of the Crown." He urges that the accused has admitted the Crown's title by becoming the purchaser, and that as he has not completed the payment of his instalments, the land is still Crown land. Being Crown land it is at the disposal of the Crown, and consequently Crown forest. I need only say that this is not the kind of case in which the Forest Ordinance was intended to apply. The word " forest " must be read in connection with the title to the Ordinance and its general object. The expression " land at the disposal of the Crown " is not fully defined. As it is defined, it does not mean only the various categories of land mentioned in the definition, but is said to include them. It leaves it open to the Crown, therefore, to say that, strictly speaking, any Crown land at all is forest. As I have said I do not think that the definition must be construed in this manner. In any case, I do not think that this is a proceeding which ought to be brought under the Forest Ordinance. As was remarked in the case of *Weerakoon v. Ranhamy* [1] at the foot of page 48, the various categories of cases there mentioned as not being such cases as ought to be dealt with criminally under the Forest Ordinance are not exhaustive. This seems to me another type of case which ought not to be dealt with by the criminal remedy which that Statute provides, and on both these grounds I would, therefore, allow the appeal, and refer to the Crown such other remedies as it may conceive it possesses.

Set aside

[1] *(1921) 23 N. L. R. 48*