

Present : Shaw J.

1918.

OBEYESEKERA v. BANDA.

939—P. C. Matale, 9,937.

Forest Ordinance—Clearing without permit land at the disposal of the Crown—Bona fide claim of right—Ordinance No. 12 of 1840, s. 6.

Accused was charged with having cleared and broken up the soil of a piece of chena land which was at the disposal of the Crown in the Kandyan Province without a permit. He pleaded in defence that he was acting under a *bona fide* claim of right. He had no *sannas* or grant, nor did he prove payment of the customary taxes and dues. But he had a notarial deed.

Held, that as, under the circumstances, the "right" was one which could not exist in law under section 6 of Ordinance No. 12 of 1840, the accused could not be said to have acted under a *bona fide* claim of right.

"Before a person can be said to have a *bona fide* belief that the property is his, it must be a belief of the existence of a right which could exist by law."

THE facts are set out in the judgment.

No appearance for the appellant.

Garvin, S.-G. (with him *V. M. Fernando, C. C.*), for the Crown.

November 19, 1918. SHAW J.—

In this case the accused has been convicted of having cleared and broken up the soil of certain land, which was land at the disposal of the Crown in the Kandyan Province, without a permit from the proper authorities. The Magistrate has convicted the accused, and has sentenced him to payment of a fine. The accused has appealed, but no counsel has appeared to argue the appeal on his

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behalf. It appears that the appeal is chiefly based on the ground that the accused in doing what he did was acting under a *bona fide* claim of right. It appears that he claimed this land under an ordinary notarial deed dated 1893. The land, however, has been proved to be chena land in the Kandyan Province, which falls under section 6 of Ordinance No. 12 of 1840. That section provides that all such land shall be deemed to belong to the Crown, except upon proof only by a person claiming under *sannas*, or grant for the same, together with satisfactory evidence as to the limit and boundaries, or of payment of taxes, dues, and services having been rendered within twenty years for the same, as have been rendered within such period for similar lands being the property of private proprietors of the same district. In the present case there is no attempt to show any *sannas* or grant or payment of the customary taxes and dues. The claim set up is under an ordinary notarial deed. The right which he is alleged to claim is not such a right as under section 6 of the Ordinance exists in law, and, in my view, before a person can be said to have a *bona fide* belief that the property is his, it must be a belief of the existence of a right which could exist by law. The case referred to P. C. Matale, No. 5,111, was a case in which the accused claimed under a talipot from the Kandyan Government. If they believe that document to be genuine, they would have a *bona fide* claim of right, which could exist in law under section 6 of Ordinance No. 12 of 1840. That appears to distinguish that case from the present.

I think the decision of the Magistrate is correct, and dismiss the appeal.