

OBEYESEKERA v. NAIDE.

572—P. C. Matale, 5,111.

Arulanandan, for appellant.

July 13, 1918. ENNIS J.—

In this case the accused has been convicted for breach of the Forest Ordinance and the rules thereunder of clearing chenas without permission. A series of cases showing that where the act is done under a *bona fide* claim of right criminal proceedings should not be taken against the accused were cited to the learned Magistrate. Those cases are found in volume XVII. of the *New Law Reports*, pages 225, 227 and 228, and that principle has been consistently followed since. The Magistrate, however, held that since the decision in the case of *The Attorney-General v. Punchirala* (18 N. L. R. 152) an accused cannot set up the defence that he had prescriptive right to the property. That may be so in civil cases. But it does not follow that it cannot be a good defence to a criminal action. In my opinion the question is one as to whether the offence comes within the general exception set out in section 72 of the Penal Code. I referred to that section in the case of *The Attorney-General v. Rodriguez* (19 N. L. R. 65). In my opinion, where there is a *bona fide* mistake of fact, there is a good defence to a criminal action. Here it is apparent that the accused were acting under a *bona fide* impression that they were entitled to the land in question. They rested their claim on a registered talipot as well as on prescription.

I allow the appeal.