

1928

Present : Lyall Grant J.

PERERA v. WIJESINGHE.

686—P. C. Kalutara, 25,303.

Forest Ordinance—Clearing Crown land—Possession of land for over ten years—Bona fides—Ordinance No. 16 of 1907, s. 20.

Where the accused was convicted of having illicitly cleared Crown land and it was established that the accused was in possession of the land for over ten years,—

Held, that there was sufficient evidence of good faith on the part of the accused and that the conviction was bad.

APPPEAL from a conviction by the Police Magistrate of Kalutara.

Weerasinghe, for accused.

Basnayake, Acting Crown Counsel, for the Crown.

November 2, 1928. LYALL GRANT J.—

The accused in this case was charged with the offence of having illicitly cleared and broken up the soil of about an acre of Crown land called Galdolayawatta, in breach of section 21 of the Forest Ordinance, No. 16 of 1907, and with thereby having committed an offence punishable under section 22 of that Ordinance. The learned Magistrate has found as a fact that the accused is the owner of a land called Galdolayawatta of about 2 acres in extent and that there are rubber trees on it which are about 12 or 13 years old. The accused was found guilty of encroachment and was fined Rs. 50, in default six weeks' rigorous imprisonment.

The question of encroachment on Crown lands is dealt with by Ordinance No. 12 of 1840, which confers certain rights upon persons who have taken possession of and cultivated Crown land for a period of not less than 10 years. Section 8 of the Ordinance provides that if a person without a grant or title from Government has taken possession of, cultivated, planted, or otherwise improved any land belonging to Government, and shall have held uninterrupted possession thereof for not less than 10 nor more than 30 years, such person shall be entitled to a grant from Government for such land on certain payment with certain exceptions. The accused, therefore, is in the position that he is entitled to make a demand of Government for a grant for the land which he has planted and improved.

I do not think that the Forest Ordinance was intended in any way to impair the rights which were conferred by the Crown Lands Ordinance, or to penalize a person who had acquired rights as against Government. The accused in the present case avers that the plantation was in fact made by his father, who died some time after the making and that both he and his father have acted under the *bona fide* impression that they were entitled to the land in question. He has also produced a title deed, which, he says, refers to this land, I see no reason, apart from any other considerations, to suppose that the accused has acted otherwise than *bona fide*, and on this ground alone the prosecution ought not to have succeeded. I would refer to the case of *Obeyesekere v. Menik Naide*.¹

1928
 LYALL
 GRANT J.
 Perera v.
 Wijesinghe

The appeal is allowed and the conviction quashed.

Appeal allowed.

