

Present : Dalton J.

1929.

## ARULAPPAH v. KAIKAN.

48—P. C. Mannar, 16,906.

*Forest Ordinance—Conviction for cultivation of Crown land—Magistrate's power to order destruction of crops—Ordinance No. 19 of 1907, s. 22.*

Where an accused is found guilty of cultivating Crown land without a permit, the Police Magistrate has no power to order the destruction of crops raised by the accused.

**A** PPEAL from a conviction by the Police Magistrate.

*Gnanapragasam*, for accused, appellant.

*Basnayake, C.C.*, for respondent.

February 7, 1929. DALTON J.—

The appellant has been charged with breaking up the soil of about 1 acre of land and cultivating it without a permit from the proper authority, an offence punishable under section 22 of the Forest Ordinance, No. 16 of 1907.

He has appealed from that conviction on various grounds. He has first of all urged that no offence is set out in the charge, and in support of this the Counsel has referred to a judgment of this Court *De Silva v. Odris*.<sup>1</sup> In that case, in the course of his judgment, de Sampayo J. incidentally refers to the charge on which that case is based; he points out that the charge refers to the alleged offence as a breach of section 21 of the Ordinance, whereas the charge should have referred to the law or rule framed under that section which had been contravened.

It will be noted that the charge in this case before me merely states the offence, and states that the offence was punishable under section 22. The circumstances therefore differ from this, in the case referred to me. It is clear, however, that de Sampayo J. came to the conclusion that the appeal in that case should be allowed on other grounds for the prosecution failed to show that any offence had been brought home to the accused.

The appellant then urged that he had shown that what he did here, he did under a *bona fide* claim of right. He purports to produce a title deed he had got executed a month prior to this offence, which deed purported to convey to him certain lands situated in the locality named, there being six vendors to that deed.

<sup>1</sup> C. A. R. 27.

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He called one of the vendors as a witness. It is quite obvious from that witness's evidence that he had no knowledge of the whereabouts of the land which the accused had cultivated.

There was ample evidence in my opinion to show beyond any doubt whatsoever that the appellant was not acting *bona fide*, but was fully aware that he had no right whatever and also that his so-called vendor had no right whatever to the land.

Lastly, it is urged that there was no specific act of breaking up or cutting the land as alleged in the charge. But there is evidence that the accused did cultivate the land, and it is also obvious that the accused admitted that he had done this, but that he was entitled to do it.

The evidence establishes the fact that the land mentioned in the charge is forest and at the disposal of the Crown. All the elements, therefore, are present to justify the Magistrate in convicting the accused. The appeal must, therefore, be dismissed and the conviction affirmed.

The Magistrate directed that the crop planted on the land be seized and destroyed and the fences be removed. He purported to act under section 41 of the Forest Ordinance of 1903. The Crown Counsel agrees with me that he had no power to do as he did. The latter part of his order will therefore be deleted, but this is not to be taken as any recognition of appellant's right to them.

*Affirmed.*

