ALAWATUGODA RATEMAHATMEYA *v.* KIRIWANTE.

P. C., Nuwara Eliya, 8,926.

Forest Ordinance, No. 10 of 1885, chapter IV.—Prosecution under rules of 3rd February, 1887—Proof in such cases—Validity of judgment—Criminal Procedure Code, s. 372.

In a prosecution for clearing (for chena cultivation) a land at the disposal of the Crown without a permit, in breach of a rule framed under chapter IV. of the Ordinance No. 10 of 1885, it is necessary to prove that the land is not one within a reserved or village forest ; that it is at the disposal of the Crown ; that it is a chena ; that its extent and boundaries are so and so ; and that the accused cleared it.

A judgment of a criminal court should specify the offence with which the accused is charged, in terms of section 372 of the Criminal Procedure Code.

THE charge against the accused in this case was that he cleared for chena cultivation a land known as Komarikagalgawahena (situated at Thenpila in Walapane), at the disposal of the Crown, without a permit from the Government Agent or Assistant Government Agent within whose jurisdiction the land was situated, in breach of clause 1 of the rules dated 3rd February, 1887, framed under chapter IV. of Ordinance No. 10 of 1885, and the Police Magistrate, after evidence heard, delivered judgment as follows : " This is Crown land under the Ordinance 12 of 1840. " Defendant is convicted and fined two rupees and fifty cents."

On appeal (taken with leave of the Court below), *Wendt* appeared for accused appellant.

The Supreme Court quashed the conviction and remitted the case for further evidence.

19th March, 1895. WITHERS, J.—

The accused has been sentenced to pay a fine of Rs. 2·50, but the judgment which precedes the sentence is defective for this, if for no other, reason, that it does not specify the offence in the mode required by section 372 of the Criminal Procedure Code.

But I will assume that the offence is the breach of a rule passed on the 3rd February, 1887, in conformity with the provisions of the 4th chapter of Ordinance No. 10 of 1885, which forbids clearing for chena cultivation land at the disposal of the Crown without a permit, and that in violation of that rule the accused on some day in September, 1894, cleared for chena cultivation without a permit a land of three kurunies in extent, known as Komarikagalgawahena, situated at Thenpila in Walapane.

Can this conviction be supported? The Magistrate has given the accused leave to appeal from this judgment, and so I have jurisdiction to entertain the appeal. I do not know how the accused came to obtain the leave of the Court to appeal. I can only suppose that the Magistrate felt some doubt about the correctness of his decision.

Unfortunately there is not sufficient material to enable me to determine whether the accused is innocent or guilty of the offence laid to his charge. In the first place, no one testifies that the accused did, as a matter of fact, clear the land above mentioned for chena cultivation. In the second place, there is no evidence that this land is not within a reserved or village forest; and as these rules can only relate to land at the Crown's disposal other than that included in a reserved or village forest, this fact, if it be a fact, is one necessary to be established by the prosecution. Then, there is not sufficient material for me to determine whether the said land is at the disposal of the Crown. I should like to know something more about the situation of this little patch of ground, for, according to the complaint, the so-called *hena* is only three kurunies in extent. If this is a mistake of mine, and if the extent relates to the extent cleared, then I should like to know what the entire extent of the land Komarikagalgawahena is. It does not follow that every patch of ground in the Island which has forest trees on it, or is waste, or is unoccupied or uncultivated, is presumed to be the property of the Crown. Again, this parcel of land is not said to be a chena, though bearing the name of Komarikagalgawahena, nor is it shown to be land which can only be cultivated after intervals of several years.

The one witness for the prosecution deposes that it is covered with lantana scrub. Why should not that be cultivated every year? The one witness further deposes that the land has no boundaries. I cannot conceive such a state of things. It must have some boundaries, or at least be surrounded on all four sides by something distinguishable from itself—path, river, road, field, or something.

If it is contained within a larger area of Crown land, what are the boundaries of that land? If a piece of Crown land has no boundaries, boundary marks, or clearly defined limits of some kind, how is a person to know whether he is inside or outside of a piece of Crown land? Can a purely forest offence be imputed to a man, if he cannot know whether he is acting outside or inside a land at the disposal of the Crown?

The inquiry into this alleged offence errs on the side of compendious packing. I therefore quash the conviction and remit the case for further inquiry into the points indicated, and I trust that the judgment will be in accordance with the 372nd section of the Criminal Procedure Code.