1895. *July 10, 11.*

NUGAPITIYA MUHANDIRAM *v.* SUDALAYANDI *et al.*

P. C., Kégalla, 13,750.

Forest Ordinance, 1885—Rule made under chapter IV.—Clearing land for chena cultivation—Land at the disposal of the Crown—Evidence.

On a charge laid under rule 1 of the rules framed under chapter IV. of the Ordinance No. 10 of 1885, that the accused cleared a land at the disposal of the Crown without a permit from the Government Agent, it is necessary to prove that the land was cleared for chena cultivation, that such land was at the disposal of the Crown, and that it was not within a reserved or village forest.

Semble, per BONSER, C.J.—The only intelligible way of interpreting the expression "land at the disposal of the Crown" in the interpretation clause is to read clauses (*b*), (*c*), and (*d*) as cutting down the generality

of the definition given in clause (*a*), so that the meaning of that expression would appear to be all forest, waste, unoccupied, or uncultivated land, which has not been expressly granted away by the Crown (clause *b*), or in respect of which the Crown has not waived its right by issuing its certificate of no claim (clause *c*), or which has not been registered a temple land (clause *d*).

THE plaint charged the accused with unlawfully and wilfully, and without obtaining the permission of the Government Agent of the Province of Sabaragamuwa or of the Assistant Government Agent of Kegalla, clearing or causing to be cleared for chena cultivation the land called Galpilleheressa, being a land at the disposal of the Crown, and not included in a reserved or village forest, in breach of rule 1 of the rules framed under chapter IV. of the Ordinance No. 10 of 1885, &c.

Rule 1 (published in the *Gazette* of 22nd March, 1889) was as follows: "No land at the disposal of the Crown shall be cleared "for chena cultivation without a permit from the Government "Agent," &c.

After evidence heard for complainant and the accused, the Police Magistrate found both the accused guilty of "clearing a "land at the disposal of the Crown, to wit, Galpilleheressa, for "chena cultivation without a permit," &c., and sentenced them to a fine of Rs. 30 and Rs. 5 respectively.

The accused appealed.

Bawa, for appellant, contended (1) that rule No. 1, upon which the conviction was founded, was *ultra vires* of section 41 (*a*), for while the rule provided against "clearing for chena cultivation," the Ordinance empowered the making of rules for only regulating or prohibiting the cutting of or setting fire to chenas; (2) that there was no evidence that the land which had been cleared was not included in a reserved or village forest; and (3) that there was no evidence that the appellant had himself committed the offence complained of.

Rámanáthan, *S.-G.*, for the Crown: The terms of rule 1 are practically the same as the terms of section 41 (*a*). "Clear-"ing for chena cultivation" involves the operation of "cutting" and "setting fire" to chenas, and as the *Gazette* which published the rule sets forth that rule 1 and certain other rules following it were made under section 41, the words "clearing for chena cultivation" should be taken to mean cutting and setting fire to the chena named in the plaint. Rule 1 is therefore *intra vires*. [BONSER, C.J.—But is the land "at the disposal of the "Crown?"] Yes, because it is proved that it was forest before the

1895.

accused cut the trees standing on the land. It must be admitted that no evidence has been laid before the Court that the land in question was not included in a reserved or village forest. Mr. Justice Withers, in 8,926, Police Court, Nuwara Eliya, decided on 19th March last (*New Law Reports, p. 73*), held that such evidence was necessary, but he allowed the Crown an opportunity to supply the deficiency at a further hearing which he ordered. The Crown should be given a similar opportunity in the present case. [BONSER, C.J.—Ought you not also to prove that the land in question is one "in respect of which no person has acquired any "right by written grant or lease made by or on behalf of the British, "Dutch, or native Governments, and duly registered as required "by law"; or one "in respect of which no person has acquired a "right as against the Crown by the issue to him of any certificate "of no claim by the Crown under Ordinance No. 12 of 1840 or "No. 1 of 1844"; or one "not registered as temple lands under "Ordinance No. 10 of 1856?" These appear to be qualifications of the expression "land at the disposal of the Crown."] The definition of that expression has not been so construed before. What appears as (*b*), (*c*), and (*d*) in the definition clause, and what has just been interpreted as qualifications of (*a*), have always been read as different classes of lands, and not as narrowing the purview of (*a*). [BONSER, C.J.—Take (*d*), and the definition would run as follows: "Land at the disposal of the Crown means all land ..... not "registered as temple lands under Ordinance No. 10 of 1856." Could the Crown claim the house in which you are residing as land at the disposal of the Crown, because it was not registered as a temple land? Or take (*c*), and the definition would run as follows: "Land at the disposal of the Crown means all land ..... "in respect of which no person has acquired a right as against the "Crown by the issue to him of any certificate of no claim by the "Crown," &c. Would this entitle the Crown to claim your residence as land at its disposal, because you have not acquired it under the certificate mentioned?] In neither case could the Crown claim my residence, as my title to it rests on a Crown grant, which falls within (*b*). The intention of the Legislature was to describe four classes of lands as comprehended in the expression "land at the "disposal of the Crown." That intention has been inartistically expressed, being open to the *reductio ad absurdum* interpretation suggested. But that difficulty arises only when the clause is read too literally. On the other hand, it is impossible to construe "(*d*)" as a qualification or cutting down of "(*a*)" without adding many new words to "(*d*)."

BONSER, C.J.—I admit that difficulty.

1895. July 11.

Rámanathan.—Grammatically, then, the interpretation of the Court is inconclusive in regard to the theory that (*b*), (*c*), and (*d*) are qualifications of (*a*). By the word "means" the Legislature meant "includes," so that the definition would run as follows: "Land at the disposal of the Crown includes the different classes "of lands mentioned in (*a*), (*b*), (*c*), and (*d*)." [BONSER, C.J.—It has been held that "includes" signifies "has the following meanings in addition to its popular meaning," *13 L. R., Q. B., 195.*] It is submitted that "means" here signifies "includes" in its ordinary sense. But is it necessary to decide this question in the present case? If the Court holds that (*b*), (*c*), and (*d*) are qualifications of (*a*), it is submitted that the onus of proving the negative facts contemplated by (*b*), (*c*), and (*d*) does not lie on the Crown. There is evidence on record to show that the first accused ordered the clearing of the land.

11th July, 1895. BONSER, C.J.—

In this case the appellants were found guilty of "clearing a land "at the disposal of the Crown, to wit, Galpilleheressa, for chena "cultivation, without a permit from the Government Agent of "the Province or the Assistant Agent of the district, in breach "of rule 1 of the rules framed under chapter IV. of Ordinance "No. 10 of 1885, as prescribed by the Government Agent of the "Province and approved by the Governor, with the advice of the "Executive Council, published in *Gazette* No. 4,915 of March 22, "1889, and thereby committing an offence punishable under "section 42 of Ordinance No. 10 of 1885," and the first appellant was sentenced to pay a fine of Rs. 30, or in default to undergo one month's simple imprisonment, and the second appellant was fined Rs. 5.

The first appellant is the owner of a tea estate near Undugoda, and he has recently cleared some land, on which forest trees were growing, which adjoined his estate. The second appellant was a contractor whom the first appellant employed to clear the land in question. There is no evidence as to the purpose for which the land was cleared, except that one of the witnesses for the prosecution stated that when he inspected the land the first accused was opening up a road. It appears from the evidence that the accused's land is planted with tea, and one might assume that the adjoining land was cleared by him to be used for a similar purpose. As I said before, there is no evidence which points to

1895. *July 11.* BONSER, C.J.

the purpose for which the land was cleared, except to be used for a road. Now, what the regulation which he is charged with infringing forbids is "clearing land at the disposal of the Crown for "*chena cultivation.*" Therefore, the purpose for which the clearing is made is part of the offence. Clearing by itself without a permit is not made an offence by any rule; it is clearing for a particular purpose, and that purpose not having been proved here the conviction cannot be supported.

The Solicitor-General, who appeared to support the conviction, admitted that it could not be supported owing to another difficulty, and that was, that there was no evidence that the land cleared was not within a reserved forest, for if it was within a reserved forest the regulations would not apply. But there was another difficulty, namely, that it is not proved that this land was land at the disposal of the Crown. Section 3 of Ordinance No. 10 of 1885 defines the expression "land at the disposal of the Crown" to mean all land, and then there is a dash and four clauses, each headed by a letter. The Solicitor-General said that the land in question came within clause (*a*) of the definition, as being land which, under Ordinance No. 12 of 1840, section 6, was presumed to be the property of the Crown until the contrary be proved; in other words, that it was forest, waste, unoccupied, or uncultivated land; and he further contended that these clauses (*a*), (*b*), (*c*), and (*d*) were to be considered independently, and that it was sufficient if you found any land that answered the description given in any one of those clauses. But it appears to me that that is an impossible interpretation of the clauses. Apply that interpretation to clause (*d*). If that clause is to be read independently, the section would read—"land at the disposal of the Crown" means all land not registered as temple land under Ordinance No. 10 of 1856. Now, it is a well-known principle of interpretation that where the word "means" is used in an interpretation Ordinance it signifies that the word defined is to have that meaning, and no other. The result, therefore, would be that, once you found land was not registered as temple land, it was for the purpose of that Ordinance "land at the disposal of the Crown." That is an impossible interpretation. In the same way take clause (*c*), and we arrive at an equally absurd result if we interpret that independently, for then we should have a definition of "land at the disposal of the Crown" as referring to "all land in respect of which no person has "acquired a right as against the Crown by the issue to him of a "certificate of no claim by the Crown under Ordinance No. 12 of "1840 or No. 1 of 1844." It seems to me that the only way of reading the interpretation clause, so as to make intelligible sense, is to

read clauses (*b*), (*c*), and (*d*) as cutting down the generality of the definition contained in clause (*a*), so that the meaning would be that "land at the disposal of the Crown" means all forest, waste, unoccupied, or uncultivated land, which has not been expressly granted away by the Crown (clause *b*), or in respect of which the Crown has not waived its right by issuing its certificate of non-claim (clause *c*), or which has not been registered a temple land (clause *d*). But it is not necessary to decide the meaning of "land "at the disposal of the Crown" in this case. I have expressed my present opinion of its meaning, but I am open to re-consider my opinion at any time on further argument.

The Solicitor-General asked that the case may be sent back for further evidence. The case stands thus. The defendant claims to be the owner of this land, and he produced a conveyance of the land to himself made just before the clearing operation. There was also some evidence that the land or a portion of it had been cultivated in years gone by. The evidence as to the ownership of the land called on behalf of the prosecution was of the vaguest nature, merely consisting of an assertion by a number of witnesses that the land was Crown land. Having regard to all the circumstances of the case and to the fact that, if the defendant has been acting illegally, the Crown has its civil remedy, I do not think it proper to send the case back as the Solicitor-General asks may be done, and I therefore quash the conviction and acquit the accused.

Accused acquitted.