

CASSIM v. KANDAPPA.

P. C., Chilaw, 18,112.

1901
December 13

Sentence of fine of Rs. 20 coupled with an order to keep the peace—Right to appeal therefrom.

There can be no appeal against a sentence of fine of Rs. 20 coupled with an order to keep the peace.

Binding over a party to keep the peace is not a "punishment" under the Penal or Criminal Procedure Code.

THIS was an appeal by the accused who had been sentenced to a fine of Rs. 20 and bound over to keep the peace for six months, upon a conviction for theft of coconuts and for criminal trespass under sections 368 and 433 of the Penal Code.

H. Jayawardene, for appellant, opened the facts of the case. [BONSER, C.J.—Does an appeal lie? The fine is not over Rs. 25.] The order to keep the peace in addition to the fine makes it appealable, because the order to keep the peace is a punishment in addition to the fine. [BONSER, C.J.—Is the order a punishment?] I submit so. [BONSER, C.J.—Section 52 of the Penal Code defines what punishment is, and an order of this kind does not fall within the term. The appeal cannot be heard.]

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— In this case the appellant went on a certain land, into a cocoanut garden with other people to pluck nuts. For that he was prosecuted and has been sentenced to a fine of Rs. 20 and bound over to keep the peace for six months. It seems to me that no appeal will lie against this conviction, because it is a case where the accused has been sentenced to a fine not exceeding Rs. 20 and to no other punishment. It is clear that binding over to keep the peace is not a punishment. Punishment is not defined in the Criminal Procedure Code, but it is defined in the Penal Code. The Criminal Procedure Code says in § 3 that expressions not defined in the Code shall have the same meaning as they have in the Penal Code. Section 52 enumerates punishments, and binding over to keep the peace is not one of them.

I quite agree with the Magistrate that it is very desirable that persons should not be allowed to go into lands which are in the occupation of others and pluck nuts with the intention of asserting a claim or right. If they have any right or claim they must press it in the Civil Courts.

