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WIJESINHA *v.* BABAHAMY.

P. C., Tangalla, 15,665.

Unlawful assembly—Penal Code, s. 141—Party in possession of land—Party attempting to turn out the party in possession—Right of party in possession to assemble persons and prevent by force removal of crop.

A party in possession of a land has a right to prevent by force a party attempting to oust him, or remove by force the crop raised by him.

Hence, persons assembled with deadly weapons to resist ouster, or prevent the removal of the crop, cannot be charged with being members of an unlawful assembly, under section 141 of the Penal Code.

THE accused in this case, twelve in number, were found guilty under section 141 of the Penal Code of being members of an unlawful assembly, armed with deadly weapons, and attempting to enforce their supposed right to the produce of the chena in question. It appeared that the Assistant Government Agent of Tangalla had directed the Mudaliyar of East Giruwa pattu and a Forest Ranger to proceed to the land where the twelfth accused was carrying on chena cultivation and seize the crop of kurakkan there harvested as belonging to the Crown; that as these officers were measuring the kurakkan with the consent of the cultivators, the second and twelfth accused bade the latter to cease measuring, as the land belonged to the twelfth accused; that they and the other accused came with guns and katties and threatened the Government officers to kill them on the spot if they did not retire; and that in conseqence they had to retire. It was claimed on behalf of the Government that the kurakkan attempted to be seized was grown by felling a Crown forest in the neighbourhood of lands belonging to some of the accused.

The Magistrate found the twelfth accused to be the chief claimant, and the first, second and twelfth to be the ringleaders of the unlawful assembly. He sentenced each of them to a fine of Rs. 50 and ordered them to enter into a recognizance to keep the peace for six months. The other accused were called upon to execute similar bonds.

They appealed.

Bawa, for appellants.—The charge does not specify the common object, and there is no evidence that any of the accused, save the first, second, and twelfth accused, had common intention. They had a right to defend the crop raised by them on a land which they claimed as their own. The Government officers were the aggressors. They claimed a right to the land, but it

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has been held in India that where one party was in possession and the other party was attempting to turn them out, the party in possession was protected by section 104 of the Indian Code, corresponding to section 97 of our Code. (*Re Tulsi Singh*, cited in *Starling, p. 160*). The action of the accused in the present case was lawful.

Cur. adv. vult.

1st May, 1901. MONCREIFF, J.—

The accused in this case were charged in the Police Court of Tangalla with being members of an unlawful assembly within the meaning of section 141 of the Penal Code.

The first, second, and twelfth accused were, upon conviction, fined Rs. 50 each, and called upon to execute bonds for Rs. 100 to keep the peace for six months, and in default of payment to undergo two months' rigorous imprisonment.

The twelfth accused had in some way come into possession of Kolakahawala chena and put it into the hands of cultivators. That being so, the Forest Ranger of the district discovered what he calls a flaw in the claim of the accused, and "identified" the land. Certain discussions thereupon took place, and it was well understood that the Assistant Government Agent claimed the land for Government, while the accused stood upon his claim. The Forest Ranger says that "the Assistant Government Agent had "himself held a careful inquiry on the spot, and had given them "the chance of settling the matter."

On the 29th January, 1901, the Mudaliyar B. R. Wijesinha and the Forest Ranger repaired to the spot. They were accompanied by the Village Arachchi of Paraganpalata, the Peace Officer of Kudagalawa, and a Forest Guard. They were proceeding on the order of the Assistant Government Agent to seize and divide the kurakkan, when they were interrupted by the accused. The cultivators, who admitted they were put there by the accused, were assured by the Forest Ranger that the land belonged to the Crown, and made no objection, being satisfied no doubt so long as they received their share of the produce.

The charge against the accused was that on this occasion (the 29th January, 1901) they "were members of an unlawful assem-"bly, armed with deadly weapons; and that they did by a show "of criminal force attempt to enforce their supposed right to the "produce of the chena" (Criminal Procedure Code, section 141).

Mr. Bawa's argument for the appellants seems to resolve itself into two points. He contended that both the charge and proof were defective, because there was neither allegation nor proof of the common object of the assembly. I think the common object

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is sufficiently stated; that is, to enforce their supposed right to the produce of the chena by a show of criminal force (Penal Code, 138 A). I think also that, subject to the point I am about to notice, the charge was made out. It is true that, although the Forest Ranger disclaimed the intention of ordering the cultivators to measure or interfere with the produce of the chena, he states that he had gone to the spot, under orders, for the purpose of seizing and dividing the kurakkan. But it appears to me that, if he and his party had not behaved with moderation, and if the Mudaliyar with four or five other headmen had not quieted the accused, a violent encounter would have taken place.

As to Mr. Bawa's second point, he referred to a passage in Starling's *Indian Criminal Law* (*7th ed., 1897, p. 160*), for the purpose of showing that the action of the accused was lawful. I do not find that the authorities there cited are quite in point, but they seem to imply that, although persons may not lawfully assemble to enforce a right or supposed right *vi et armis*, they may do so to defend a right which they possess and enjoy. The question then is—was the possession of the accused such as to render lawful their assembling to prevent the removal of their crop by the Forest Ranger?

The question of possession was not carefully regarded at the trial. The Magistrate says he considered it irrelevant to inquire whether the Crown or the accused is entitled to the land and crop. But I gather that, in some way and at some date undisclosed, the twelfth accused came into possession of the chena and put it into the hands of cultivators. The cultivators raised a crop and were engaged in reaping it when this incident occurred. Some time ago, however, but apparently after this accused had put cultivators on the land, the Forest Ranger found a " flaw " in the claim and he and those who were with him undoubtedly intended to take the owner's share of the produce, provided they were not prevented by the demonstration of the accused. I gather that from the circumstances, and the accused were entitled to infer it because the Forest Ranger would say no more beforehand than that he had his instructions. His instructions seem to have been to take the owner's share of the produce if the cultivators made no objection—but the accused did not know that, and I can only conjecture.

The question, then, stands thus. The Forest Ranger knows that the twelfth accused is in possession of the chena, and, as appears on page 15 of the evidence, that his cultivators have raised a crop. He find, as he says, a flaw in the accused's claim, and tells him so. He asserts in a vague way that the Assistant Government

Agent gave the accused a chance of settling the matter, but he takes no step until the crop is reaped, when he comes forward and shows an intention to carry off (with the consent of the cultivators) the owner's share of the crop. Was the accused entitled to offer forcible resistance under such circumstances. He was in possession, wrongfully it may possibly be, by his cultivators, who explained their position to the Forest Ranger on the 29th January. I think he must have known it before. He, the twelfth accused, had been told that his claim was bad, and that the Crown claimed the chena. The merits of the dispute are not before me. I know nothing about them, and I am not to assume that the possession of the twelfth accused was a mere encroachment, or that the dispute was not *bonâ fide*. As the twelfth accused was in possession, and there was a dispute,—*bonâ fide* for all I know,—I think that the accuseds were entitled to prevent by force the removal of the crop, and that the conviction of the appellants was bad and should be quashed.