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DISSANAYAKE *v.* ANTHONY FERNANDO.

P. C., Panadure, 13,373.

Appeal—Criminal Procedure Code, s. 335 (g)—Conviction for criminal trespass and order thereon on accused to enter into bail bond to keep the peace—Right of accused to appeal from such order—Conviction of accused, under s. 433 of the Penal Code, for criminal trespass with intent to commit the offence of taking forcible possession of a field by criminal force—Illegality of conviction.

An order made on an accused who had been convicted of an offence under section 433 of the Penal Code to enter into a bail bond to keep the peace is an appealable order under section 335 of the Criminal Procedure Code.

Casim v. Kandappa (5 N. L. R. 311) commented on.

The conviction of a single person for criminal trespass, with intent to commit the offence of taking forcible possession of a child by criminal force, is not legal, because the offence intended to be committed may be charged against the members of an unlawful assembly, but not against a single person.

THE complaint against the accused was that he entered a field which was said to belong to the complainant and reaped a crop of paddy sown by the complainant. The accused claimed the field,

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as also the crop, alleging that he had sown it. The Police Magistrate framed two charges: one of theft under section 367, and the other of criminal trespass under section 433. After hearing the evidence adduced the Police Magistrate acquitted the accused of the charge of theft, but convicted him of criminal trespass, and ordered him to enter into a bail bond to keep the peace for a term of six months.

The accused appealed.

Samarawickreme, for respondent, took the preliminary objection that no appeal lay, as it was from an order binding over to keep the peace (*Casim v. Kandappa, 5 N. L. R. 311*).

Schneider, for appellant.—The case cited does not apply. Bonser, C.J., held in it that there was no appeal from a sentence of a fine of Rs. 20 coupled with an order to keep the peace. The ground of that decision was that section 335 (*g*) enacts that there is no appeal without the leave of Court, " where an accused has been sentenced by a Police Court to a fine not exceeding twenty-five rupees without any other punishment." " Punishment " is not defined in the Criminal Procedure Code. Section 3 of that Code enacts that words not defined in it are to be deemed to have the meanings attributed to them in the Penal Code. Bonser, C.J., stated that " punishment " is defined in the Penal Code, but that statement is not quite correct. Section 52 of the Penal Code only enumerates the punishment. The present case does not fall within section 335 (*g*). Hence the decision cited does not apply. [GRENIER, A.J.—Then, do you mean to contend that, although there is no appeal from a sentence binding over to keep the peace coupled with a fine not exceeding Rs. 25 or with a term of imprisonment not exceeding one month, yet there is an appeal as of right from a bare sentence binding over to keep the peace?] I would submit it is so, although it is an anomaly. To ascertain whether an appeal lies in any particular case, we should refer to that section of the Code which deals generally with the right of appeal. That section is 338. It gives an appeal to any person dissatisfied with any judgment or " final order, " subject to the exceptions in sections 335, 336, and 337. The sentence appealed from does not fall within any one of the exceptions in section 335, as it is a bare order to enter into a bond to keep the peace. This is a " final order " within the meaning of section 338. It is " final," because it concludes the matter so far as the accused is concerned. The accused is dissatisfied with that order, and he has an appeal as of right, not only on the law but on the facts also. If the Supreme Court is not disposed to uphold the

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contention as regard the right to appeal, this is a case deserving of being dealt with by way of revision. The conviction is on the face of it wrong. The accused has been convicted of criminal trespass because he entered upon a land in the occupation of another, the intent being to commit an offence. The Police Magistrate calls "forcibly taking possession" an offence. Such an offence is unknown to the Penal Code.

Counsel argued also as to the conviction of the accused with intent to commit the offence of taking forcible possession of a field by criminal force, under section 433 of the Penal Code.

1st December, 1902. GRENIER, A.P.J.—

A preliminary objection was taken to this appeal on the ground that the order made by the Magistrate requiring the appellant to enter into a bond to keep the peace for a term of six months was not an appealable one. I must confess that I was at first inclined to listen to this objection, especially as it was urged that there was authority in support of it.

The learned counsel of the respondent referred me to a judgment of this Court pronounced by the late Chief Justice, and reported in *5 N. L. R. 311*, in which he held that no appeal lay against a sentence of fine of Rs. 20 coupled with an order to keep the peace, and that binding over a party to keep the peace is not a punishment under the Penal or Criminal Procedure Code. While agreeing with the Chief Justice in holding that the term "punishment" does not embrace the act of binding over a party to keep the peace, the term "punishment" not being defined under the Penal or Criminal Procedure Code, I still think that an order of the character under consideration closely falls within the purview of section 338, which gives the general right of appeal in both Police Courts and District Courts. That section says, "Subject to the provisions of the last three preceding sections, any person who shall be dissatisfied with any judgment or final order pronounced by any Police Court or District Court in a criminal case or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment for any error in law or in fact."

Now, the provisions which exclude an appeal in the case of a Police Court are the provisions to be found in section 335, sub-sections (*c*), (*f*), and (*g*). In cases falling under (*f*) and (*g*) the leave of the Court is necessary in order that the appeal may be entertained by the Supreme Court. The words of sub-section (*f*) are as follows: "Where an accused has been sentenced by a Police Court to a term of imprisonment not exceeding one month without any

other punishment," and the terms of sub-section (*g*) are as follows: "Where an accused has been sentenced by a Police Court to a fine not exceeding twenty-five rupees without any other punishment."

In the present case the accused has not been sentenced in terms of sub-section (*f*) or (*g*) to require the leave of this Court to appeal, but an order final in its nature and effect has been pronounced against him, as I take it, in accordance with the provisions of section 338. Clearly an appeal from such an order cannot be said to be governed by the provisions of section 335, sub-sections (*f*) and (*g*). That order stands by itself, uncontrolled by the provisions of the sections I have referred to, and must be dealt with as a final order pronounced by a Police Court in a criminal case, and in respect of which an appeal may be preferred, as a matter of right, to the Supreme Court.

For these reasons I am of opinion that an appeal lies in this case, and that the objection taken by the respondent's counsel must be over-ruled.

On the merits of this appeal there can be no doubt whatever that the Magistrate has convicted the appellant of an offence which is not known to the Penal Code. The counsel for the respondent candidly admitted this. He has convicted him of the offence of criminal trespass with intent to commit an offence, the offence being to take forcible possession of a field by use of criminal force. This may be charged against the members of an unlawful assembly as the common object of such an assembly, but it is inapplicable in the case of a single accused as in this case. The Magistrate has convicted the appellant under section 433, but I fail to find any provision in the Code which makes it penal to take forcible possession of land by use of criminal force, whatever the words used by the Magistrate in the terms of the conviction may mean. I see that the alternative charge originally framed against the appellant was one of theft, but for some inscrutable reason that charge appears to have been abandoned, and the other charge which I have alluded to been substituted.

In these circumstances, it only remains for me to quash these proceedings.