1955 *Present :* Fernando, J.

J. H. DAVID SILVA, Appellant, *and* D. R. O., KOLONNA KORALE, Respondent

S. C. 716 of 1955—M. C. Rakwana, 46,051

Forest Ordinance—Section 20—Prosecution for unlawfully clearing Crown land—Quantum of evidence.

The appellant was charged with unlawfully clearing about two acres of Crown land described as "Lot 18 in Village Plan 758", in breach of section 20 of the Forest Ordinance and the rules framed thereunder. It appeared from the evidence that the two acres in question were surrounded on all sides by land not occupied by the Crown. The only evidence alleging that the land in question was Lot 18 and Crown Forest was the bare statement of the Village Headman. The Plan itself was not produced with technical evidence to show that the two acres in question constituted Lot 18 in the Plan.

Held, that the evidence was insufficient to establish that the land in question was Crown land.

APPEAL from a judgment of the Magistrate's Court, Rakwana.

Sir Lalita Rajapakse, Q.C., with *S. H. Mohamed*, for the accused-appellant.

Shiva Pasupati, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 19, 1955. FERNANDO, J.—

The appellant was charged with unlawfully clearing "about two acres of a land called 'Galbokuoya Reservation' more particularly described as Lot 18 in Village Plan 758 which is a land at the disposal of the Crown", in breach of section 20 of the Forest Ordinance and the rules framed thereunder. The only evidence in proof of the allegation that the land is "land at the disposal of the Crown" was that of the Village Headman who stated that the land is named "Galbokuoya", that it is described as Lot 18 in Plan 758 and that it is a Crown Forest. It appeared from his evidence that the two acres which had been cleared were bounded on the North and South respectively by Village Committee roads and on the East by a land purchased by the accused and on the West by some old fields, a description which indicates that the two acres in question are surrounded on all sides by land not occupied by the Crown.

It was elicited in cross-examination from the same witness that at an inquiry by a Settlement Officer in 1952 the accused claimed the two acres and that the officer kept the deeds which the accused produced. Later however the witness said that no such claim was made. The defence called no evidence and the appellant was convicted of the offence charged. In my opinion the evidence was insufficient to establish that the land in question is Crown Land. The statement in the charge that the land in question is described as Lot 18 in Village Plan 758 must presumably have been made on the basis that Lot 18 is known to be, and would be shown by the Plan to be, land at the disposal of the Crown. If the Plan itself had been produced together with technical evidence to establish that the two acres in question constitute Lot 18 in the Plan, then there would be no doubt as to the identity of the land. But all we have here is a bare statement by the Headman that the land in question is Lot 18 and is Crown Forest. Moreover there was the evidence by the Headman that the accused had claimed this land before the Settlement Officer, even though the Headman subsequently tried to withdraw that admission. On the Headman's own description of the land it is more than likely that the claim made before the Settlement Officer must have related to the two acres in question. According to the Headman himself no order appears yet to have been made upon that claim. Hence, at the least, the accused's occupation is referable to a *bona fide* claim of right.

For these reasons I would set aside the conviction and acquit the accused.

Appeal allowed.