1954 *Present* . **Gunasekara J.**

ATTORNEY-GENERAL, Appellant, *and* T. H. ALWISAPPU, Respondent

S. C. 1,343—M. C. Galle, 6,135

Land Development Ordinance (Cap. 320)—Prosecution thereunder—Right of forest officer to institute it—Sections 3–6, 168 (2)—Criminal Procedure Code. 148 (1) (b).

There is nothing in the Land Development Ordinance to prevent a range forest officer from availing himself of the provision of section 148 (1) (*b*) of the Criminal Procedure Code in order to institute a prosecution for an offence punishable under that Ordinance.

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

A. E. Keuneman, Crown Counsel, for the Attorney-General.

No appearance for the accused respondent.

Cur. adv. vult.

August 27, 1954. GUNASEKARA J.—

The Attorney-General appeals against an order made by the magistrate of Galle discharging the respondent who was charged before him with an offence punishable under section 168 (2) of the Land Development Ordinance (Cap. 320).

A written report to the effect that the respondent had committed such an offence on the 22nd May, 1952, was made to the magistrate by a range forest officer on the 29th July, 1952. It purported to be made in terms of section 148 (1) (*b*) of the Criminal Procedure Code, and the magistrate ordered the issue of a summons to the respondent. The summons was issued on the 12th August and served on the respondent, and he appeared in obedience to it on the 21st August. On that day the statement of the particulars of the offence contained in the summons was read to the respondent as the charge, and he pleaded not guilty. The trial was postponed to the 5th November. The respondent failed to appear on that day and a warrant was issued for his arrest. He surrendered to the court on the 10th December and the magistrate ordered that the case should be " called " on the 18th December.

In the meantime, on the 25th October, 1952, the range forest officer had submitted to the magistrate a second report, which too purported to be a report in terms of section 148 (1) (*b*) of the Criminal Procedure Code. He described it in a covering letter as an amended plaint. On the 18th December the respondent was again charged and he pleaded not guilty. The record of that day's proceedings reads :

" Accd : T. H. Alwisappu—pt.
Vide fresh plaint filed on 25.10.52.
Charged from Ss.
' I am not guilty '
Trial for 12.3—Cite prosecution witnesses.
Warned to appear. "

The summons from which the respondent was charged on this day could only have been the one that was issued on the 12th August, 1952, for no other summons had been issued.

When the case was taken up for trial on the 12th March, 1953, a proctor appearing for the respondent submitted that a forest officer had no

authority "to take any proceedings under the Land Development Ordinance". The learned magistrate heard argument on the question so raised and made order discharging the respondent.

The Land Development Ordinance assigns to various officers various powers, functions and duties, but none of these relate to the institution of prosecutions. The ground on which the learned magistrate discharged the respondent is that "under sections 3–6 of the Land Development Ordinance only such officers as are contemplated therein can institute proceedings under the Land Development Ordinance", and a range forest officer is not one of them. But the institution of a prosecution is not a proceeding under this ordinance. It is a proceeding under the Criminal Procedure Code, even though the offence alleged is a contravention of a provision of the Land Development Ordinance. The Criminal Procedure Code provides that proceedings in a magistrate's court shall be instituted in one of the ways prescribed in section 148 (1) of that Code, and there is nothing in the Land Development Ordinance that qualifies this provision. The proceedings in the present case were instituted in the way prescribed by section 148 (1) (*b*) of the Code, namely by a written report being made to the magistrate by a public officer to the effect that an offence had been committed, which the magistrate's court had jurisdiction to try. In my opinion, therefore, the order of discharge was wrongly made.

This circumstance however, cannot conclude the question whether the appeal should be allowed. The charge to which the respondent pleaded and in respect of which the order was made was that on the 22nd May, 1952 he did (in the words of the summons) "break up for cultivation and oncroach (*sic*) about 2½ acres and erect a building in the Crown land called the Kottawa-Kombola Reserve" and that he thereby committed an offence punishable under section 168 (2) of the Land Development Ordinance. The allegation contained in what the range forest officer described as an amended plaint was that the respondent committed an offence punishable under section 168 of the Ordinance by doing certain acts "after the mapping out survey of 1950 and thereafter", and not "on the 22nd May, 1952", as alleged in the summons, and that what he did was to "clear, break up for cultivation, cultivate, erect a building or structure, fell or otherwise destroy trees standing, otherwise encroach on" the crown land in question and that he was continuing "to do such acts". The prosecution made no application for amendment of the charge, and there was no evidence before the magistrate upon which he could base an order for amendment. But the filing of a fresh report on the 25th October, 1952 (which alleged against the respondent a wider range of activity over a longer period of time than was alleged in the charge to which he had pleaded) indicates that the prosecution themselves desired that the respondent should not be tried on that charge. In these circumstances I do not think that there is sufficient ground for setting asido the order of discharge.

The appeal is dismissed.

Appeal dismissed.