1916.

Present: Schneider A.J.

BROOME v. CAROLIS et al.

808 to 810—P. C. Kalutara, 39,672.

Appeal—Sentence of one month's imprisonment and order to give security to be of good behaviour—Theft—Wrongful loss—Wrongful gain.

An appeal lies as of right from a sentence by a Police Court of one month's imprisonment and an order to give security to be of good behaviour for six months.

THE facts appear from the judgment.

H. J. C. Pereira (with him *J. S. Jayewardene*), for accused, appellants.

Bawa, K.C., for complainant, respondent.

September 14, 1916. SCHNEIDER A.J.—

This is an appeal by three accused persons who have been convicted of theft and sentenced to one month's rigorous imprisonment, and bound over in Rs. 100 to be of good behaviour for six months. A preliminary objection was taken that no appeal lies, as the sentence was one of a month's imprisonment only, and that the binding of the accused over to keep the peace was not a " punishment " within the meaning of section 335 (1) (*f*). The decision in *King v. Baronchi*[1] covers the point raised in regard to the right of appeal. In that case it was held by the Full Bench of this Court that the word " punishment " should be given its ordinary meaning, and not restricted to the punishments detailed in section 52 of the Penal Code. The appeal was accordingly argued on the facts. I think it is well proved that the land in question, which is called Pandegodawatta, had been in the possession of the owners of Glendon estate for some years, but that some villagers had within recent times asserted title. The evidence also establishes that some of these villagers were prosecuted in the Police Court of Kalutara, and " that they undertook to bring a civil case if they had a right." There is a conflict of evidence as to the circumstances under which the first accused came to live on the land in dispute, but I am inclined to take the view adopted by the Police Magistrate that he was living on the land with the permission of the Superintendent of the estate. The land in dispute is claimed by a notary under deeds dating from 1884, and the evidence establishes beyond any doubt that the three accused in plucking the coconut and jak fruits, to the value of about Rs. 15, did so at the instance of the notary. In the circumstances, I am inclined to take the view that

[1] *(1914) 17 N. L. R. 444.*

the accused cannot be convicted of theft, because it cannot be said that they intended by the act of plucking those nuts to cause wrongful gain to the notary or wrongful loss to the estate. It may be that in the case of the first accused he was aware that if the notary took the nuts the estate would suffer the loss of the nuts, but I do not think the circumstances under which he committed the act justifies me in saying that he intended to cause wrongful loss to the estate in plucking those nuts. I, therefore, set aside the conviction of theft, but I am strongly of opinion that people should not be permitted to take the law into their own hands and invade the property of third parties, although they may have a good claim to such property. I, therefore, affirm the sentence in regard to the accused being bound over for six months. I do this under the provisions of section 81.

Varied.