

Present: Lascelles C.J.

CHENA MUHANDIRAM v. RAWAPPER

55—P. C. Anuradhapura, 40,400.

Forest Ordinance, No. 16 of 1904—Bona fide claim of right—How far prosecutions under the Ordinance are justifiable—Civil actions.

LASCELLES C.J.—How far the provisions of section 4 of Ordinance No. 16 of 1907 are intended to over-ride the general principle that the criminal jurisdiction of the Magistrate is ousted by a *bona fide* claim of right is not clear. But the language of the section suggests the view that the questions of title contemplated by the section are such as may occur incidentally in the course of prosecutions under the Ordinance; and that the section was not intended to authorize the Crown to proceed criminally in cases where there is from the beginning a *bona fide* question of title between the Crown and the accused. In other words, the section does not furnish a short cut for disposing of disputes which are essentially of a civil nature by means of a criminal prosecution.

In cases where a village community *bona fide* claims against the Crown under an ancient grant, it is not a fair course of procedure to prosecute the claimants individually for breaches of the Forest Ordinance.

THE facts appear from the judgment.

Talaivasingham, for the accused, appellant.

Garvin, Acting S.G., for the Crown.

Cur. adv. vult.

February 2, 1914. LASCELLES C.J.—

This is an appeal against the conviction of the appellant for clearing 1½ acre of chena land named Gangagodahena, in the village of Elagamuwa, in contravention of rules framed under the Forest Ordinance, 1907.

The appeal is based principally on the ground that the appellant, as a native of the village of Elagamuwa, was entitled, in common with the other inhabitants of the village, to the land in question.

In support of his claim the appellant produced a talipot purporting to be dated in the year 1500 of the Saka era and registered in 1872. This document purports to be a grant in consideration of a payment of 500 pieces of silver by one Gobara Mudiyanse of Korasagalla to the persons therein named of the village of Elagamuwa, including certain hamlets named in the deed. The boundaries to the village

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are given, and according to the Korala, who was called as a witness for the prosecution, the land in question is within these boundaries.

The question whether the Police Magistrate should have adjudicated on the question of title set up by the appellant was raised during the argument. Although the appellant has not, in my opinion, made out a *bona fide* claim to the land, I do not wish to pass over the question of law involved.

In prosecutions under the Forest Ordinance the Court is empowered to adjudicate on any questions which may arise as to the title to the land in respect of which the prosecution is laid; but the decision of the Court on any such question is not *res judicata* in any civil suit in which the title of the land may be put in issue. It thus became the duty of the Magistrate to adjudicate on the title of the appellant for the purposes of the prosecution.

How far the provisions of this section are intended to over-ride the general principle that the criminal jurisdiction of the Magistrate is ousted by a *bona fide* claim of right is not clear. But the language of the section suggests the view that the questions of title contemplated by the section are such as may occur incidentally in the course of prosecutions under the Ordinance; and that the section was not intended to authorize the Crown to proceed criminally in cases where there is from the beginning a *bona fide* question of title between the Crown and the accused. In other words, the section does not furnish a short cut for disposing of disputes which are essentially of a civil nature by means of a criminal prosecution. But however that may be, it is only within certain limits that a Magistrate, in prosecutions under this Ordinance, can effectually adjudicate on questions of title. There are numerous cases where the matter in dispute is of such a nature that any attempt to solve it without proper pleadings and issues being formulated can only result in confusion.

In the present case, for example, if the appellant had been able to show any reasonable grounds for his contention that he and his fellow-villagers were the successors in title to the grantees under the talipot, issues would have arisen which could never have been disposed of in a summary trial in a Police Court: such questions, for example, as the genuineness of the document, the title of the grantor, and the effect of the various transactions with regard to the land. Further, in cases where a village community *bona fide* claims against the Crown under an ancient grant, it is not a fair course of procedure to prosecute the claimants individually for breaches of the Forest Ordinance. The matter in dispute is one which should be determined by proceedings under the Waste Lands Ordinances or by civil action.

But in the present case there is a total absence of evidence of any connection between the appellant and the original grantees. It is

impossible to say that he has raised a question of title on which the Magistrate cannot adjudicate, for he has failed to indicate any title at all. At the same time allowance should be made for the fact that the accused acted in the exercise of a supposed right. I affirm the conviction, and reduce the fine to one of Rs. 5.

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Affirmed; fine reduced.
