1940 *Present :* **Moseley S.P.J. and Keuneman J.**

SILVA *et al. v.* THE ATTORNEY-GENERAL.

225—D. C. Colombo, 7,632.

Forest Ordinance—Seizure of timber felled from Crown forest—Reason to believe that offence has been committed—Material upon which the decision may be reached—Good faith—Forest Ordinance, ss. 37 and 61 (Cap 311).

The Government Agent (Uva) on receipt of information from the Ratemahatmaya that the plaintiff was felling timber in certain areas of land which were in process of settlement under the Land Settlement Ordinance referred the matter to the Settlement Officer.

On the advice of the Settlement Officer that no private claim to the forest in the land could be recognized the plaintiff was requested in writing to cease felling and warned not to remove the timber already felled.

Thereupon the Government Agent wrote to the Ratemahatmaya authorising him to seize the timber and to see that that no felled timber was removed.

The Government Agent purporting to act under the provisions of section 39 of the Forest Ordinance made a report which in effect suggested that a forest offence had been committed and which promised a further report when investigations had been completed.

Held, that upon the material contained in the advice of the Settlement Officer, the Government Agent, as Forest Officer, had reason to believe that a forest offence had been committed and that the seizure of the timber was lawful.

Held, further, that the Government Agent in authorising the seizure was acting in good faith and that he was protected by section 61 of the Forest Ordinance.

APPEAL from a judgment of the District Judge of Colombo. The facts appear from the judgment.

L. M. de Silva, K.C. (with him *D. W. Fernando* and *J. A. T. Perera*), for plaintiffs, appellants.

E. G. P. Jayatileke, K.C., S.-G. (with him *T. S. Fernando, C.C.*), for substituted defendant, respondent.

Cur. adv. vult.

February 3, 1941. MOSELEY S.P.J.—

The plaintiffs appellants brought this action in the first place against Mr. E. T. Millington who at all times material to the action was Government Agent of the Province of Uva, claiming from him damages in respect of the seizure by him of certain logs of satinwood which they had felled on land known as Etimole Nindagama. The Government undertook the defence of the action and, in accordance with the provisions of section 463 of the Civil Procedure Code (Cap. 86), the Attorney-General was substituted as defendant in the action.

The parties went to trial on the following issues :—

(1) Did the satinwood trees caused to be felled by the plaintiffs and referred to in paragraph 3 of the plaint stand on land belonging to a private individual ?
(2) What were the dimensions and value of the logs of satinwood caused to be seized by the original defendant ?
(3) Were the seizures made or caused to be made by the original defendant unlawfully and at a time when he had no reason to believe that any forest offence had been committed ?
(4) Did the original defendant fail duly to report forthwith the said seizures to the Police Magistrate of Badulla ?
(5) Did the law require the original defendant to report forthwith the seizures to the Police Magistrate of Badulla ?
(6) Did the original defendant deprive the plaintiffs of their right, if any, to assert their claims to the said logs of satinwood and to obtain an order in their favour in regard to the disposal of the same ?
(7) If issues (3) and/or (6) are answered in the affirmative and/or issues (4) and (5) are answered in the affirmative, what damages, if any, is plaintiff entitled to ?
(8) Does the plaint disclose a cause of action ?
(9) Did the original defendant act in good faith with regard to all acts done by him or omitted to be done by him in connection with the seizures of the said timber ?
(10) Do the following averments in the answer—to wit,—(*a*) that the satinwood trees which were caused by the plaintiffs to be felled and cut into logs in June and July, 1936, did not stand on a land belonging to a private individual, and (*b*) that the said timber was not cut on any land to which the plaintiffs or those, if any, under whom they purported to act in felling the timber were entitled—constitute a defence to the plaintiffs' claim ?

At the close of the plaintiffs' case the defendant applied to amend his answer and to have further issues framed consequent thereon. They were accordingly framed as follows :—

(1) (*a*) Were the forests from which the timber had been felled conveyed by the Sannas P 49 to the grantees named therein ?
(2) (*a*) Are the said forests on which the timber had been felled land at the disposal of the Crown and the property of the Crown ?

(11) Was the seizure of the logs in question lawful, whether the logs were felled from trees standing on land belonging to the Crown or to a private individual ?

While the issues were framed on the footing that there were several seizures of satinwood logs, learned Counsel for the appellants made it clear at the outset of his argument that he did not press the appeal in respect of any of the seizures which took place after July 4, 1937.

The learned District Judge found it convenient in his judgment to deal first with issues (3) and (9) holding the view that a decision on these issues would to a very large extent determine the result of the action. He might indeed have gone further since an answer to issue (9) in the affirmative must, in view of section 61 of the Forest Ordinance (Cap. 311), decide the action in favour of the defendant.

The plaintiffs, on May 5, 1936, had written to the Ratemahatmaya of the Buttala division, wherein the land in question is situated, informing him that they had acquired certain rights in the land and that they proposed to begin felling satinwood trees standing thereon. The Ratemahatmaya forwarded a copy of the letter to the Government Agent (Mr. Millington) who was also a Forest Officer, and expressed the opinion that the felling should not be allowed pending the settlement of the area, which appears to have been in process, under the Land Settlement Ordinance (Cap. 319). This correspondence was referred by the Government Agent to the Settlement Officer for his advice.

On June 9, 1936, the Settlement Officer replied as follows :—

"The Government Agent, Uva,
Badulla.

Mr. Odiris de Silva should be warned that no private claim to any forest in Etimole can be recognized. The area is now under survey for the purpose of Settlement and if Mr. de Silva fells any timber from the land before it is settled it will be at his own risk.

Sgd. S. VALLIPURAM,
for H. E. JANSZ,
Settlement Officer."

Colombo, June 9, 1936.

This document was marked D 3 in the action and is set out fully as it seems to me to have considerable bearing on the matters in issue. The first plaintiff was accordingly warned in the sense of D 3 and was informed that permission to fell could not be granted. That was on June 15, and on the same date the plaintiffs' manager was requested in writing by the Ratemahatmaya to cease felling and warned not to remove timber already felled. The plaintiffs thereupon asked the Ratemahatmaya by letter for the Legislative authority under which he purported to act. The plaintiffs do not appear to have received a reply to their inquiry and proceeded with the felling and removal of timber. On July 8, Mr. Millington wrote to the Ratemahatmaya authorizing him to "continue the seizure" of all timber already felled and to see that no felled timber was removed.

On July 21, Mr. Millington, purporting to act under the provisions of section 39 of the Forest Ordinance, made a report which, in effect, suggested that a forest offence had been committed and which promised a further report when investigations had been completed.

It may be convenient here to set out sections 37, 39 and 61 of the Forest Ordinance which are as follows :—

"37. When there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber or produce, together with all tools, boats, carts, and cattle used in committing any such offence, may be seized by any forest officer or police officer.

39. Upon the receipt of any such report the Government Agent or Assistant Government Agent shall forthwith forward the same to the Magistrate having jurisdiction to try the offence, and such Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

61. No suit or criminal prosecution shall lie against any public servant for anything done in good faith or omitted by him in good faith under this Ordinance."

In considering the position at this stage the learned District Judge in his judgment observed that "in view of the advice and directions given by the Settlement Officer as embodied in his endorsement D 3 *and his letter D 8* the question arises whether Mr. Millington acted in good faith in ordering his subordinate officers to make a seizure of the timber which had been felled and thereby prevent their transport and removal". I would draw attention to the words "and his letter D 8" since the learned Judge appears to have been under a misapprehension as to the date of that letter. Elsewhere in his judgment he remarked that Mr. Millington had sought to justify his action on advice embodied in the letter D 8 of "11th June, 1936". The date of the letter is in fact July 11, 1936, and could therefore only justify in retrospect an action which took place on or about June 26. On that date Mr. Millington had before him, in the way of advice from the Settlement Officer, the document D 3. Had he reason upon that material, to believe that a forest offence had been committed? To answer this question it is necessary to take into consideration certain circumstances surrounding the land whereon stood the timber in respect of which Mr. Millington formed the opinion that an offence had been committed.

The plaintiffs derive their title, whatever it may be, from a Sannas, that is to say, a copper plate grant made by the King of Kandy in 1807. That the Sannas itself is genuine is admitted. The effect of it, for the purposes of this judgment is immaterial. It is sufficient to say that the point which appears to have been always in doubt is whether or not it conveys to the grantee the high forest.

Controversy seems to have arisen for the first time in 1905, when in response to a call by the Settlement Officer for documents of title this particular Sannas was produced. A translation was made and correspondence followed as to the correctness thereof. In May, 1906, the matter appears to have been shelved until the time should arrive to carry out the Etimole irrigation scheme.

In 1921, the Ratemahatmaya asked that inquiry be made into the title since an application to remove some ebony from the land had been received by him. The Sannas was again produced by the applicant who threatened to take legal proceedings if his activities were circumscribed. The controversy seems to have terminated in May, 1923, when the then Government Agent (not Mr. Millington) expressed the opinion that an expensive survey was not worth while "unless the Crown can assert title". The matter was apparently not pressed by the applicant.

The subject was again revived in 1929 when the Divisional Forest Officer who considered that prompt action in connection with the claim was of importance since attempts were being made to "exploit satinwood from the area". These representations were addressed to Mr. Millington who by his letter D 91 of September 7, 1929, referred the matter to the Settlement Officer. Mr. Millington mentioned in his letter that the Kachcheri file dealing with this subject was forwarded with his predecessor's letter of December 4, 1922. The Settlement Officer's reply was that nothing had been proposed or done since June, 1923.

It will be observed that on three occasions questions connected with title had been raised with the authorities and Counsel for the appellants contends that Mr. Millington must have been aware of these circumstances and for that reason had no reason to believe that the action of the plaintiffs in felling and removing timber in 1936 constituted a forest offence. It is a fact that the prosecution which was instituted failed and Counsel argued that in view of certain decisions of this Court Mr. Millington should have been aware that a prosecution could not succeed if there was a genuine dispute in progress as to title. In *Chena Muhandiram v. Rawapper*[1] Lascelles C.J. expressed the view that the section (now section 2) of the Forest Ordinance which deals with prosecution 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 *Weerakoon v. Ranhamy*[2] a Full Bench laid down *inter alia* the classes of cases in which a Magistrate should refer the matter to a Civil Court. Counsel contended that Mr. Millington must have been aware of these decisions and should therefore have been put on his guard. Assuming that he was in fact aware of these decisions the question to be answered is, was he aware that there was a dispute between the plaintiffs or the persons from whom they derived title on the one hand and the Crown on the other. As I have pointed out the matter had been discussed on three previous occasions, viz., 1905, 1922, and 1929. At the latter date only was Mr. Millington the Government Agent of the Province of Uva. Should he, in 1936, have been cognisant of any previous controversy, or, if he was not, should he have taken steps to satisfy himself that there had been no previous dispute? In the course of his evidence, taken *de bene esse* he said that his mind was a blank in regard to the question of title to the land. He also admitted that he did not go into the matter at all but referred it to the Settlement Officer. He had, he said, no recollection of having seen file 1552, which was the Kachcheri

[1] *17 N. L. R. 225.*

[2] *23 N. L. R. 33.*

file dealing with the matter. His evidence on these points was accepted by the learned Judge and I see no reason for forming a contrary opinion. It has been contended by learned Counsel for the appellants that Mr. Millington's action in referring the matter to the Settlement Officer amounted to a delegation of his powers which he was not legally empowered to delegate, and that he must therefore take the consequences. As has already been remarked the Kachcheri file dealing with this matter was sent to the Settlement Officer in 1922. There is evidence that a file, which must have been opened subsequently, was sent to the same office in 1934. It seems to me that the Settlement Officer was an officer who was eminently qualified to advise the Government Agent on a matter of this kind and that the Government Agent would be justified in accepting his advice without further inquiry. It is true that the learned District Judge appears to have misdirected himself in assuming that Mr. Millington justified his action in view of the Settlement Officer's advice contained in the letter D. 8, which was written subsequently to the seizure. On the other hand he may have intended to say that Mr. Millington acted on the advice of the Settlement Officer, given in D 3, which was subsequently embodied in D 8. In either case it seems to me a matter of no importance since, in my view, the observations of the Settlement Officer in D 3 are sufficiently forceful to warrant Mr. Millington in believing that a forest offence had been committed.

In regard to issue (9) the matters which have already been considered are relevant. Section 61 of the Forest Ordinance has been set out above. Before deciding whether Mr. Millington acted in good faith in regard to the acts done or omitted to be done by him, the meaning of the term "good faith" requires consideration. The expression is not defined in the Forest Ordinance, nor in the Interpretation Ordinance. Various authorities have been brought to our notice. Perhaps the lowest estimate of what is necessary to satisfy the requirements of the term is contained in *Mogridge v. Clapp* [1] in which Kekewich J. defined "*bona fides*" as the absence of "*mala fides*". It is difficult to accept this as a definition which is generally applicable, however appropriate it may have been to the particular case then under consideration. Indeed, in *Mookerjee v. Collector of Hooghly* [2], a case which dealt with the responsibility of Magistrates it was held that the mere absence of *mala fides* was no defence where a Magistrate had pleaded that he was acting judicially and *bona fide* and that there was no protection afforded to a Magistrate who had not acted with due care and attention. The question to be considered, said Macpherson J., was whether the Magistrate had acted reasonably, circumspectly, and carefully. In *Collector of Sea Customs, Madras v. Punniar Chithambaram* [3] Kindersley J. quoted from a previous judgment the following words :—

> "A groundless belief formed from ignorance or rashness is plainly not sufficient—the belief must be entertained in "good faith" and those words were meant, I think, to require an honest persuasion, found after fair inquiry and consideration . . . ."

[1] *(1892) 3 Ch. Div. page 382.* [2] *13 Sutherland W. R. 13.*
[3] *I. L. R. 1 Madras, page 89.*

Re Greenwood; Greenwood v. Firth [1] was an action against trustees under a will who had failed to collect a certain debt due to the testator. The defendants relied upon section 21 (2) of the Trustees Act, 1893 (56 & 57 Vict. C. 53) which relieves a trustee from responsibility "for any loss occasioned by any act or thing done by him . . . . in good faith". It was held by Eve J. that "care must be exercised not to extend to the careless or indolent trustee the statutory relief intended for the careful and active, though possibly mistaken, one," and further that if "the loss has arisen from the neglect or carelessness or supineness of the trustee, and not from a mistaken but *bona fide* exercise of the statutory powers vested in him, then . . . . the case is one outside the section altogether . . . . and no relief is thereby afforded to the trustee".

In the present case the main charge against Mr. Millington is that he did not recall the Kachcheri file from the Settlement Officer and consult it for the purpose of forming his own opinion on the matter. The learned District Judge found that it would be difficult to hold that Mr. Millington's action would have been in any way different if he had himself investigated the claim. I have already expressed the opinion that he sought advice from an eminently suitable quarter and it does not seem that a study of the file would have helped Mr. Millington to form the conclusion that a *bona fide* claim of right existed. He would have found that the amended translation of the Sannas excluded high forest from its operation, and from Mr. Fox's report, annexed to the document D 104 he would have gleaned that the Sannas conveyed "only certain paddy fields and the 'goda walpitiya' appertaining thereto." He would have learned of the previous protests which had been allowed to lapse into oblivion, and of the crediting to revenue of money received from the sale of felled ebony instead of paying it to the claimants. The District Judge had all these facts before him and he answered issue (9) in favour of the defendant. It does not appear that there were brought to his notice all the authorities which were cited to us. Nor does it appear to me that, however highly we value the requirements of the term "good faith" in the light of the authorities that have been considered, the learned District Judge could have come to any other opinion.

As I have already observed the case depends almost, if not altogether entirely, upon the answer to issue (9). In regard to issues (4) and (6), it is only necessary to say I agree with the views of the learned District Judge thereon. It is undeniable that the prosecution in respect of the alleged forest offence was subject to considerable and unexplained delay, but in this respect it does not seem that Mr. Millington was in any way responsible.

For these reasons I think that issues (3) and (9) were rightly decided in favour of the defendant and that the plaintiffs' action therefore fails.

The appeal is dismissed with costs.

KEUNEMAN J.—I agree.

Appeal dismissed.

[1] *105 L. T. 509.*