SILVA *v.* BANDA.

213—P. C. Anuradhapura, 40,334.

March 20, 1914. DE SAMPAYO A.J.—

The accused has been convicted of the offence of having cleared Crown land for chena cultivation without a permit, in breach of rule 1 framed under section 21 (*a*) and (*b*) of the Ordinance No. 16 of 1907. The accused has been fined Rs. 15, and he appeals on certain matters of law. The accused claims to be entitled to a half share of the whole village Pallekagama, in which the particular lot of land is situated, on a sannas which is produced. It appears that this sannas was produced in 1905 in a series of previous cases, in which a number of villagers of Pallekagama were prosecuted for the same offence, and that after a long delay the Crown in 1912 proceeded with one of these cases as a test case. There one Wannihamy, a brother of the accused, was prosecuted, and the Magistrate after trial held that the sannas was not genuine, but the conviction was set aside by the Supreme Court in appeal in consequence of the improper postponement of the trial and the long delay. One of the grounds taken in the appeal in this case is that the Magistrate had gone upon the judgment in the previous case in holding that the sannas was not a genuine document. The objection is good so far as it goes. But the real question is whether the accused has proved any title as against the Crown, and on this point it is sufficient to say that, for the purposes of the Ordinance, when an accused person seeks to upset the presumption in favour of the Crown on the strength of a sannas or similar document, he must show that the document was registered in accordance with law. See the definition of "Land at the disposal of the Crown" in section 3 of the Ordinance. It is proved by the Chief Clerk of the Court, who was called by the accused, and who produced the sannas in question from the record of the previous case, that the document was not registered at all. I think, therefore, that this particular objection falls to the ground. The prosecution also called evidence to show that villagers of Pallekagama had for many years chenaed portions of the village on permits from the Government, and that since 1903, when Pallekagama was surveyed, portions of the village were from time to time sold by the Crown and purchased by the villagers themselves, without any objection being made by any one claiming under the sannas. I think that this was relevant evidence on the question of title, and I cannot hold that it was inadmissible against the accused. It was finally urged that the accused acted under a *bona fide* claim of title, and was not liable to be convicted. If I had to decide the question of fact, I would have felt bound to say that the circumstances of the case indicate that the accused and others of the same family honestly believed they had a right to this village, though the existence of the sannas may not have been known to all of them before its production in the case against Wannihamy in 1905. Whether *mens rea* is required in the case of breaches of the rule in question is a matter of some doubt. The Ordinance gives jurisdiction to the Magistrate to inquire into and decide the claim of title for the purposes of the criminal prosecution; and that being so, it may be suggested that the question of offence or no offence turns upon the fact of title, and not upon the accused person's state of mind. But I am

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in entire agreement with the broad principles enunciated by Lascelles C.J. in 55—P. C. Anuradhapura, 40,400 (*Supreme Court Minutes, February 5, 1914*), with regard to the extent to which a Criminal Court should go in adjudicating upon civil claims. I am, however, precluded from giving effect to the argument in this case, because the accused can only support the appeal on the specific grounds of law taken and certified in the petition of appeal, and this is not one of them.

For these reasons I think the appeal fails and should be dismissed.

Appeal dismissed.