Present : Bertram C.J. and De Sampayo J. 1922.

HAMINE ETENA *v.* THE ASSISTANT GOVERNMENT AGENT, PUTTALAM.

10—D. C. Chilaw, 6,428.

Waste Lands Ordinance, 1897—Meaning of "Forest"—"Waste"—"Unoccupied"—"Chena land"—"Uncultivated"—Object of the Ordinance is not merely the investigation of legal title—Equitable considerations to be taken into account—Customary right of villagers to cut sticks—Communal rights.

The term "forest" in the Waste Lands Ordinance, 1897 (and in Ordinance No. 12 of 1840), must not be interpreted as meaning "virgin primeval forest."

The expression "waste lands" primarily denotes open country in which there are few or no trees—land which "lies open, desolate, unoccupied, uncultivated."

A chena land is land which either still is or within a reasonable period was under process of periodical cultivation. The mere intermittance of chenaing for some interval of time would not necessarily destroy this character. Whether it has done so in any particular case is a question of fact. Land which was at one time chena, but has now been abandoned and left to lapse into jungle, though it was once chena land, is chena land no longer.

For the purpose of the Waste Lands Ordinance land is considered unoccupied, unless it has been both actually and uninterruptedly occupied for a period of five years prior to notice. The word "occupied" is not used in the Ordinance in its ordinary sense, and not in the technical sense in which "*occupatio*" is used in Roman law.

By section 24 (c) of the Ordinance the term "unoccupied land" includes all land which at the time of the passing of the Ordinance was not in the actual occupation of any person or persons.

The Waste Lands Ordinance being an Ordinance intended not merely for the bare determination of legal rights, but also for the equitable settlement of even undefined claims, the Courts in dealing with cases under the Ordinance appropriately draw attention to equitable considerations, to which they themselves are not able to give legal effect.

THE facts are fully set out in the judgment of the Chief Justice.

E. W. Jayawardene, for appellant.

V. M. Fernando, C.C., for Crown, respondent.

Cur. adv. vult.

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This appeal arises in proceedings under the Waste Lands Ordinance (No. 1 of 1897). The case has already been the subject of criminal proceedings, and this Court, in an appeal in those proceedings, referred the Crown to its civil remedy. A *rei vindicatio* action was undoubtedly contemplated by the judgment of this Court, but, in fact, the Crown has proceeded under the Waste Lands Ordinance. I do not think, however, that the appellant has any grievance on that account. There was, I think, no intention on the part of this Court to restrict the civil remedies open to the Crown. Moreover, proceedings under the Waste Lands Ordinance, if worked in the spirit with which that Ordinance was promulgated, afford an opportunity for taking into account equitable considerations which a Court of law must ignore. If such considerations escape the notice of the special officer administering the Ordinance, there is an opportunity for drawing attention to them both in the District Court and in this Court, and in view of the recognized object of the Ordinance, this is an opportunity of which in appropriate cases advantage may reasonably be taken.

A Court, however, must, in the first instance, decide the matter according to law, and as to the law in this case there can be no doubt. The case depends on a legal presumption created by Ordinance No. 12 of 1840, and extended and intensified by the Waste Lands Ordinance itself. According to that presumption, all forests, waste, unoccupied, or uncultivated lands, and all chenas are presumed to be the property of the Crown unless the contrary thereof is proved. It is hardly contested that, if the presumption applies, the evidence adduced on behalf of the complainant is not sufficient to displace it. Let us ascertain therefore in the first place whether the presumption applies.

The fullest, and, indeed, the only intelligent description of the land before us is that of Mr. Wait, who conducted the proceedings under the Ordinance, and who was at the time Assistant Government Agent at Chilaw. His description is as follows: " When I inspected the land I found lot 2 and lot 4 were fairly old jungle, from which most of the big trees had been cut. I found stumps, and there were two or three big trees on those lots more or less adjoining the Gansabhawa path. The rest of the land was thick jungle, except in the south of lot 4, where the growth thinned away as the soil was poor. There was a clearing of a few perches on the north-west corner of lot 4 . . . . . There was no cultivation whatever on this land. Lots 2 and 4 were thick jungle, they were certainly fifteen to twenty years old, and probably more. The big trees were more than thirty years old. There were no signs of occupation. There were one or two natural water-holes; they cannot be called wells. I saw only two stumps of old trees. I consider this land to be jungle which has not been cleared for years

and years and years. There could not have been chena for a very considerable length of time, at least fifteen or twenty years." Another witness, the local Mudaliyar, said : " The jungle appears to be about thirty-five or forty years old . . . . I have always regarded the land as Crown forest . . . ." Another witness, the Vidane Arachchi, said : " The big trees are about seventy years old . . . . from the height and thickness I made out that some trees were seventy years old. Even on the roadside there is a kahata tree—very high and about seventy years old."

Reading Mr. Wait's description and comparing it with the formula in which the presumption is embodied, one feels that it could scarcely be possible to imagine a piece of land to which both the letter and the spirit of that formula, under one head or another, was more obviously intended to apply. I will, however, take the categories contained in the formula and consider them *seriatim*. They may be most conveniently arranged as follows :—(1) Forest ; (2) waste ; (3) chena ; (4) unoccupied ; (5) uncultivated.

Is this land " forest " ? No definition of the word is contained in the Ordinance. There is an interesting discussion of its meaning to be found in a notable contribution to the interpretation of the Waste Lands Ordinance, namely, the judgment of Sir Ponnambalam Arunachalam, as District Judge, in the Adipolla Sannas case. (See the Appendix to his *Digest of the Civil Laws of Ceylon, pp. cviii et seq.*). He there refers to a case cited before him (*Wickremeratne v. Tenne*[1]), in which Lawrie J. seems to suggest that " forest " must be interpreted as meaning " virgin primeval forest." I agree with Sir Ponnambalam's observations on this point. " Forest " does not necessarily mean " virgin forest," nor can any satisfactory reason be given why it should have this artificial meaning here. The word " forest " is used in England in more senses than one. It may mean, as it is defined in the English Encyclopædia Dictionary : " An extensive wood or tract of wooded country ; a wild uncultivated tract of ground interspersed with wood." In this sense " forest " may often include wild stretches of open moor land. On the other hand, it may be used in its more natural sense, the sense in which it is ordinarily used in literature and conversation, namely, a tract of country continuously or all but continuously covered with large trees. A forest in this sense is something at once more dignified and more extensive than a wood, but it is of the same nature. In my opinion this tract of land (6 acres) was sufficiently extensive, and the trees which it comprised were sufficiently large to entitle it to be described as " forest " in this sense of the word. It would be sufficient to decide the point on this ground alone, but I will proceed to consider the other categories.

[1] *(1894) 3 S. C. R. 99.*

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Is this land "waste land"? I have not been able to discover the source from which this expression percolated into our legislation. We had appropriated it as early as 1840, so that the source is more likely to be English than Indian. Probably it dates from the era of the Enclosure Acts, when the question of the utilization of "waste lands" seems to have been one of the subjects of general discussion. See *Jan Austeen: Northanger Abbey:* "By an easy transition . . . . to forests, the enclosure of them, *waste lands*, Crown lands, and Government—he shortly found himself arrived at politics." There are references in the nature of definitions in our own reports, but none of them are very full. Sir Ponnambalam Arunachalam, in the Adipolla Sannas Case (*p. cix supra*), says: "There is no evidence that any of these lands is not susceptible of cultivation, which I take it to be the meaning of 'waste.'" In *Assistant Government Agent v. Samarasinghe*[1] Browne J. seems to define "waste" as land not susceptible to cultivation. He says he would not class the land in question as "waste": "When there is evidence that however steep is the lie of the land there, it would have been susceptible to cultivation." Ennis J., on the other hand, in D. C. Chilaw, No. 5,053,[2] speaks of waste land as land which was put to no direct remunerative use.

The Imperial Dictionary defines "waste" adjectively as "not tilled or cultivated; producing no crops or wood," and substantively as "untilled or uncultivated ground; a tract of land not in a state of cultivation, and producing little or no herbage or wood." Webster's Dictionary apparently following a common authority (referred to as "Brande") defines "waste land" as "any tract of surface not in a state of cultivation, and producing little or no useful herbage or wood." "Waste," however, in English law, has a more definite significance. The waste or waste lands of a manor are lands which belong indeed to the lord, but which are left vacant, and over which the freeholders and tenants of the manor exercise commonable rights. The term does not imply absence of herbage, as the normal use to which the wastes are put is that of pasture. Neither, on the other hand, does it imply absence of trees. Other forms of waste are recognized, which include both forests and woodland. (See *Halsbury's Laws of England, article on "Commons," paragraphs 1016–1018*), and these forms of waste are subject to a right known as "estovers." *Halsbury (supra), paragraph 1001*, citing from Bracton, says: "Common of estovers is the profit which a man has in the soil of another to cut or prune from his forest or other wastes wood for his building, inclosing, and firing, or other necessary purposes." Nor does the term "waste" imply that the land in question is incapable of cultivation. The numerous Enclosure Acts of the 18th century, now so universally reprobated, were all Acts for the enclosure of manorial wastes for purposes of

[1] *(1900) 1 Browne on p. 224.*

[2] *S. C. Min., Nov. 19, 1915.*

cultivation. Still, there appears to me no doubt that the term "waste land" in English law (making all allowance for the specific forms of waste I have already mentioned) primarily denoted open country on which there were few or no trees. The best legal definition of "waste" is that of Watson B. in *The Attorney-General v. Hanmer and others.*[1] "The word 'waste' means desolate or uncultivated ground, land unoccupied, or that lies in commons. This is the plain and common acceptation of the word . . . . . It lies open, desolate, unoccupied, uncultivated . . . . . Again, in the description of lands or manors, the terms 'lord's waste' or 'waste of the manor,' are well known. The large open commons, within and parcel of the manor, over which rights of common or other commonable rights are exercised are 'wastes' of the manor. Moors, also, are strips of unoccupied land within the manor . . . . The true meaning of 'wastes' or 'waste lands' or 'waste grounds of the manor' is the open, uncultivated, and unoccupied lands, parcel of the manor, or open lands, parcel of the manor, other than the demesne lands of the manor." Making allowance for the fact that we have, unfortunately, no commons in Ceylon, I think the same meaning should be attached to the same phrase in our own Ordinance, and clearly on this interpretation the land in question is not waste land.

Next, is the land chena? Mr. Wait says of it that it looks as if it had not been cleared for years and years. I take the effect of the evidence to be that certain patches of the land may at one time have been cultivated by periodical clearances, but that this had long ceased, and that the land had been abandoned for an altogether longer period than any owner, when cultivating it as chena, would think of leaving for that purpose. A chena land, in my opinion, is land which either still is or within a reasonable period was under process of periodical cultivation. The mere intermittance of chenaing for some interval of time would not necessarily destroy this character. Whether it has done so in any particular case is a question of fact. But land which was at one time chena, but has now been abandoned and left to lapse into jungle, though it was once chena land, is chena land no longer, and I hold on the facts that this land is not chena land. It is quite true that the applicant in her statement to Mr. Wait speaks of this land as a chena, but she is an ignorant woman not speaking with precision, and I do not attach any importance to her use of the phrase.

We now come to what is perhaps the most important category. Is the land "unoccupied land"? On this point we have the important case of *Meera Lebbe v. Fernando*,[2] in which two eminent Judges, Phear C.J. and Berwick J., expressed the opinion that in the application of the presumption created by Ordinance No. 12 of 1840, the words "unoccupied" and "uncultivated" must be

[1] *(1858) 27 L. J. Ch. on p. 840.* [2] *(1880) 2 S. C. C. 140.*

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interpreted as meaning unoccupied and uncultivated within living memory. Phear C.J., indeed, said that this had been more than once held by this Court. I confess that I have some difficulty in appreciating on what grounds the Court thought that the words were to be so interpreted. Sir Ponnambalam Arunachalam apparently experienced the same difficulty in his judgment above referred to (see *page cxiii* of the work cited *supra*), and himself proposed a solution. The interpretation adopted in *Meera Lebbe v. Fernando*[1] appears to be inconsistent with an opinion expressed by Lawrie A.C.J. in *Assistant Government Agent v. Le Mesurier*.[2] "Proof that the land now waste and unoccupied was occupied at a time before the memory of man does not rebut the presumption that it is the property of the Crown. What has to be ascertained is the state of the land shortly before the institution of the action." It is not clear whether Withers J. concurred in this latter dictum, though he expressed no dissent. At any rate, until the matter has been considered by the Full Court, I think that, so far as the presumption under Ordinance No. 12 of 1840 is concerned, the principle laid down by Phear C.J. and Berwick J. must be considered as authoritative.

But under the Waste Lands Ordinance we are in a different position. That Ordinance itself explains the word "occupied" for the purpose of proceedings thereunder. By section 24 (*b*) it assumes that just as the fact of a land being unoccupied creates a presumption in favour of the Crown, the fact of it being occupied creates a presumption of ownership against the Crown in favour of the occupier, and it declares that this presumption shall not apply "for any greater extent of land than that actually occupied by him." There is also a reference to "actual occupation" in paragraph (*c*) of the same section, and it seems clearly the intention of the section that any occupation which is relied upon either as creating a presumption against the Crown or as preventing a presumption in favour of the Crown from arising must be "actual occupation." It is further provided by paragraph (*c*) that the term unoccupied land is to include "all land which shall not be in the uninterrupted occupation of some person or persons for a period exceeding five years next before notice given by the Government Agent or Assistant Government Agent." It thus appears that for the purpose of the Ordinance land is considered unoccupied, unless it has been both actually and uninterruptedly occupied for a period of five years prior to notice. These provisions clearly make a very important difference.

Sir Ponnambalam Arunachalam, in the judgment above referred to, seeks to give a specific legal meaning to the word "occupation." He would connect it with the term "*occupatio*" as used in Roman law. "*Occupatio*" in Roman law means a specific act. It means

[1] *(1880) 2 S. C. C. 140.*

[2] *(1899) 1 Matara Cases at p. 88.*

the taking of land either by corporal seizure or by any act indicating intention to seize with a view to assuming possession *animo domini*. But it is clear that the word "occupation" in this Ordinance is not used in this special technical sense. It denotes not an act, but a continuous condition. Land is spoken of as being occupied in this Ordinance just in the same way as in ordinary parlance, a house is spoken of as being occupied when it has a tenant. If, therefore, we apply the test whether this land has been in actual and uninterrupted occupation of the plaintiff for a period of five years before notice, it is clear that the answer must be in the negative. The only occupation she speaks of is that which took place in consequence of the clearing of two perches and the building of a hut thereon, for which she was prosecuted in the Police Court, and her occupation of that house, according to one of her witnesses, Christogu, only lasted two weeks. It seems to me clear, therefore, that the land was unoccupied land within the meaning of the Ordinance.

Apart from this test, there is another which might be applied. By section 24 (*c*) the term "unoccupied land" includes all land which at the time of the passing of the Ordinance was not in the actual occupation of any person or persons. There is no evidence to show that this land was occupied at all in the year 1897, the date of the passing of the Ordinance. On the contrary, there is positive evidence that it had been wholly abandoned.

It is not necessary to discuss whether the land is uncultivated land within the meaning of the Ordinance, for the Ordinance itself says (section 24) that the term "unoccupied land" includes uncultivated land, and what I have said already applies to this category.

The legal position then is this, that on several grounds a presumption has arisen that this land is the property of the Crown. All that remains, therefore, is that we should ask ourselves whether the plaintiff has rebutted that presumption. Here, again, it has not been possible seriously to argue that she has done so. There has been no appreciable evidence to support a claim of prescription. The appellant's father died over twenty years ago. He was blind for many years before his death. All that he is said to have done was to cultivate a small tobacco garden. Both in her statement to Mr. Wait and in two of her petitions drafted by her proctor the plaintiff frankly said that she had abandoned the land as she was too poor to cultivate it. See D 2 dated October 2, 1908: "The petitioner has remained unmarried, but being helpless and poor was unable to plant the said land, and it has now reverted to the condition of jungle." See also P 17 dated April 9, 1913: "After the death of petitioner's father, the petitioner obtained the said land and possessed it, but reason of her extreme poverty and helplessness she was unable to make any plantation thereon." Evidence has been given that she and her father allowed a witness to hunt for hares in the jungle upon the land, and that people cut sticks by

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her permission, but this evidence, like all evidence of cutting of sticks, is very dubious.

In the Court below the case put forward by the appellant's proctor was that at some undefined point of time in the past this land formed part of certain lands held in common by a village community, being high land appurtenant to the paddy fields which the village community cultivated in common. This is merely a speculation, and rests on nothing which can be regarded as evidence. Historical research up to the present does not seem definitely to have established the existence of such communities in Ceylon during historical times. The possibility of such lands as this being held not as the property of the villagers cultivating paddy in the village, but as lands over which they had a customary right to cut sticks, does not seem to have been specifically investigated. If such a right was found to exist in connection with Nindagama lands, it would be an exact parallel to the common of estovers of English law, but there appears to be no record of any such right in Ceylon either in connection with Nindagama lands or in connection with lands held direct from the king. Nor is anything of the sort claimed here. What is claimed here is not a customary right, but actual title. The theory appears to be that at some uncertain date the village community was dissolved, that its members apportioned these lands among themselves, and that they finally acquired prescriptive title against each other and against all the world. This is a mere conjecture not supported by any evidence.

It would appear, therefore, that regarding this question as a pure question of law plaintiff has failed to establish any title to the land, and that her appeal must be dismissed. It has, however, always been declared in connection with the Waste Lands Ordinance that it was not an Ordinance intended for the bare determination of legal rights, but that its object was the equitable settlement of even undefined claims. It is possible that in the prolonged and earnestly fought litigation in connection with this land, this aspect of the Ordinance may have been overlooked. In case it should be thought fit even at this stage to deal with the matter from another point of view, it may perhaps assist those responsible if we recite what we understand to be the story of the facts in the case.

We first hear of this land in the year 1870, when this and the adjoining lands were surveyed by the Crown. The whole tract of land of which this land was part consisted of some 25 acres. It was in the occupation of various people, and was to a considerable extent already cultivated with cocoanuts, some trees being of considerable age. The cultivation had gone on for so many years that the land which must originally have been jungle or chena had come to be known as Nagahawatta. In the survey of 1870 this land is marked as claimed by Yahapathhamy, father of the plaintiff, and one Punchirala, a member of his family. The land was described as

jungle land, and there was no name given to it. In the Mudaliyar's report of 1871 the names of the claimants and an estimate of the appraised value of this lot were given and a short description of the land. This land is itself called Nagahawatta, and is mentioned as being claimed by the same two persons. It is described as low jungle, but as being good for coconuts. It would appear that in the following year the Crown asserted its claim to these lands, and at various dates "settled" most of them by disposing of them in various ways, in some instances by way of sale to the claimants at favourable prices. This land, however, was not so disposed of. The history of this part of the case is more fully set out in the judgment of the learned District Judge. In the year 1885 there was another Mudaliyar's report, in which he speaks of it as claimed by Yahapathhamy and another, as being low land and very good for coconut cultivation, and as bearing the name of Kahatagahakele. In the register kept at the time of the survey and the succeeding sales there is a note against this lot that it was "reserved as village forest." This note appears to be in the handwriting of Mr. C. M. Lushington, who was Government Agent in the year 1885. It is an endorsement in indelible pencil, and appears to indicate either that it was Mr. Lushington's intention to get the land formally set apart as a village forest under the Forest Ordinance, or informally to indicate that this land was not to be disposed of, but was to be retained for the benefit of the villagers. It is clear that the Government did not recognize the claim of Yahapathhamy and Punchirala. We do not know how that claim originated, or to what extent Yahapathhamy had ever cultivated the property.

It will be convenient now to take up the story from the point of view of plaintiff herself. She made a statement at an inquiry held by Mr. Wait, at which, unfortunately, her proctor was unable to be present. Making every allowance for that circumstance, I have formed the strong impression that what she said in that statement was the simple truth, more particularly as it is supported by the petitions to which I have previously referred. "I claim the land Dawatagahakele in the notice by paternal inheritance . . . . Before the land was surveyed, when I was a girl, my father dug some wells on the land. One well is still there. My father lost his sight, and there was no one to work on the land, and so it reverted to jungle. The land was always chena with large kahata trees on it. It has been chena as long as I can remember. I am about 50 years old. After my father's death, fifteen years ago, I left the land alone till last year, except for felling sticks . . . . I never occupied" (the word "used" implies "residence") "the land till last year. I then put up a small hut by the side of the Gansabhawa road with the intention of making a plantation, but the headman got the hut burnt on two occasions. My father had five daughters. My father told them that this land came to me, and asked my brothers and

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sisters not to claim it. I maintained my father for twenty-three years while he was blind."

The truth thus appears to be this. Many years ago, in the lifetime of her father, there was a small tobacco garden on the land, and wells or pits were dug for the purpose of watering it. Her father's infirmity prevented his giving any attention to the land, which he had, no doubt, occupied at the time when the other villagers commenced their occupation of the adjoining lands. The Crown did not sell the land with the other lots, because there was an intention to devote it to a village forest. Her father thus never got the chance of a settlement. After her father's death she continued to regard the land as her own without any notion as to her precise title, and she not unnaturally regarded the fact of it not being sold with the other lots as an indication that her father's rights were recognized. She herself did nothing to the land (possibly she may have allowed an occasional villager to cut sticks), but she continued, nevertheless, to regard the land as her own. She spoke afterwards at the trial of occasional vegetable cultivation, but this is too uncertain and too disconnected to be taken into account.

How, then, did the question of her ownership of this land come up? She says that she had a quarrel with the local Police Headman, Baronchi Vidane, and that he for the first time raised the question of her right to this land. This is the only explanation we have, and it may very well be true, because it is from the side of the woman that action is first taken. She applies to her Proctor, Mr. C. E. Corea, and on October 2, 1908, under his advice, she sends a petition to the Government Agent (D 2) giving a very fair recital of the facts as she understood them, and asking for a certificate of quiet possession. She received a reply which must have seemed to her entirely satisfactory. It stated that no certificate of quiet possession could be issued to her because the land she mentioned had already been sold to one Kiri Etena. Kiri Etena was the name of the plaintiff's mother, and she naturally assumed that in some way or another her mother had purchased the land, and that it was consequently her own. Acting on the faith of this Government letter, towards the close of the following year 1909, she sold some timber trees on the land to a carpenter, who proceeded to cut them down. On October 20, 1909, the local Mudaliyar, no doubt, on the report of the headman above referred to, reported to the Government Agent that plaintiff had got two trees cut in the village reserve. The Government Agent called for her title deeds, and she naturally replied by referring him to the previous correspondence. The Government Agent on December 6, 1909 (P 1), wrote to her that the land on which the timber was felled had never been sold, and called upon her to pay Rs. 10·98. She must have regarded this letter with great astonishment, inasmuch as only a year before she had been told that the land had been sold to a person whom she took to be her mother.

She paid nothing, but the Crown seized and sold the timber. It was not until January 9, 1912, that her proctor obtained particulars of the Crown grant to Kiri Etena, and it was then apparent that that grant referred not to this land, but to another land, either adjoining it or in the same neighbourhood. As a matter of fact, the Kiri Etena referred to was not the plaintiff's mother, but another Kiri Etena, though this was a circumstance which she did not at all readily recognize. On the contrary, acting still on the advice of her proctor, the conclusion she came to was that the land now in question had been somehow acquired by her father, and that the other lot had been acquired by her mother, and that she was entitled to both, and she proceeded to address a series of petitions to the Government commencing with one on April 7, 1913. By this petition she again asked the Government Agent to direct the issue of a certificate of quiet possession in her favour. She got no answer to this petition, and on January 12, 1914, she sent another. Again she received no answer; and on May 9, 1916, she sent a third. There can be no question that these three petitions which were drafted by her proctor were sent, and that no answer was received. Probably, they were referred to the Mudaliyar for report and overlooked by him. The circumstance not unnaturally caused irritation to the mind of the plaintiff and that of her legal adviser, and the latter, in order to bring her claim to an issue, advised her to occupy the land. She, thereupon, cleared a small portion of the land and erected a hut and lived there for about a fortnight. The hut was burned down, and she evacuated the land. She asserts, no doubt on mere suspicion, that the person who burnt the hut down was the headman, with whom she was at enmity. This may or may not be true, but certain circumstances seem to indicate that the person who burnt the hut down was one who took upon himself to be concerned in the dispute between the woman and the Government Agent.

The next incident was an unfortunate one. Instead of taking civil proceedings to test the title, the local authorities proceeded against the plaintiff criminally. In so doing they were acting contrary to the rule expressly laid down by this Court, and recently confirmed in a full Court judgment, that where there is an existing dispute between a claimant to land and the Government, it is an abuse of the process of the Court to set criminal proceedings in motion in order to determine the question. The woman was convicted in the Police Court, but the conviction was set aside by this Court, and the present proceedings were then instituted.

It is apparent from a recital of the above facts that the plaintiff has no legal claim. But it is equally apparent that the story has been full of misunderstandings. The plaintiff not unnaturally conceived herself as having a paternal connection with the land. She had every reason to believe that she had some sort of claim to it.

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She at first received an answer which seemed to confirm that claim. Then without explanation she receives a contradictory communication. She addresses petitions to the Crown and receives no answer. She occupies the land under legal advice. Here, no doubt, her action was unjustified, but the action of the Crown was also unjustified in setting criminal proceedings in motion. No one knows under what circumstances her father and the other villagers, who were dealt with in 1872, came to take possession of this land. The fact remains that other occupants were given an opportunity of acquiring their land on easy terms, and this facility was not extended to her father, probably because it was intended to keep this lot as a village forest. Still to this extent her father was treated less favourably than other villagers. This circumstance and the other circumstances I have mentioned are not matter for the consideration of this Court, but may, perhaps, be matters for the consideration of an officer who is not bound to look at the matter on a strictly legal basis. Mr. Wait says that he made no attempt to come to a settlement, partly because the plaintiff had no claim (by which he meant no legal claim), and partly because the lot was required for a village forest. On the other hand, the local Mudaliyar says specifically that the land is not required for a village forest, and that he has officially recommended that it be sold. I strongly doubt the evidence produced by the Government to show that the cutting of fence sticks had taken place in this lot under official permits. There was another lot close by—the "cemetery lot"—in which this was regularly done. Two permits for cutting timber have been produced by the Crown, but they seem to me as equally applicable to the cemetery lot as to this lot.

It is much to be hoped that the prolonged course of litigation in which this woman has become involved may now be brought to an end. There appears to be some Police Court proceedings pending against the woman in connection with the charge made by her in regard to the burning of the hut. We have not these proceedings before us, but it is high time that the dispute was allowed to drop. The question of title is now decided. Whether, even at this stage of the case it may be found possible to make any equitable concession to the woman, either in connection with this land or elsewhere, is a matter for the decision of authorities other than ourselves.

In my opinion the appeal must be dismissed. The Crown was not specifically asked whether it claimed costs, and would, I think if asked, probably have waived them. In all the circumstances of the case I would make no order as to costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.