

1920.

Present: Shaw J.

PERERA v. PERERA et al.

324-326—P. C. Kalutara, 55,160.

*Enclosing fish within a net—Another person casting net within the portion enclosed—Trespass—Mischief.*

Complainant cast his net into the sea for the purpose of drawing it to the shore and catching fish that might be enclosed. The accused, who disputed the right of the complainant to cast his net, at this time came and threw their net inside the net of the complainant, preventing the complainant from catching and bringing ashore the fish that he had enclosed.

Held, that accused was not guilty of trespass, but was guilty of mischief.

THE facts appear from the judgment.

*Elliott* (with him *Mendis*), for accused, appellants.

*E. W. Jayawardene* (with him *Sundaram*), for complainant, respondent.

June 24, 1920. SHAW J.—

In this case the accused have been convicted of trespass, mischief, and intimidation, and have been fined, the first and second accused Rs. 50, and the third accused Rs. 75. The accused and the complainant are all fishermen, and it appears from the facts as found by

<sup>1</sup> *I. Jac. & W.* 494.

<sup>2</sup> *L. R. 8 H. L.* 321.

<sup>3</sup> (1917) 19 *N. L. R.* 461.

the Magistrate that the complainant had cast his net into the sea for the purpose of drawing it to the shore and catching fish that might be enclosed, and that the accused, who disputed the right of the complainant to cast his net at this time, came and threw their net inside the net of the complainant, preventing the complainant from catching and bringing ashore the fish that he had enclosed. They also were proved to have used violently intimidating language, and, although the Magistrate does not deal at any length with the matter of intimidation in his reasons for his decision, he must have believed the evidence given in respect of this, as he has convicted on that charge, as well as on the other two. The objection to the conviction on the first two counts is taken on the ground that they are not borne out by law. With regard to the trespass, the objection is that it is not trespass to any property to which the complainant had an exclusive right; and with regard to the mischief, it is objected that it is not mischief to any property within the meaning of the Penal Code, because the fish that are alleged to have been disturbed had not been reduced into possession either by the complainant or any one else. With regard to the first objection, there would appear to me to be a good foundation for it, because, although the complainant had a right to fish in this particular part of the sea, and had enclosed it with his net, this did not give him any possession of that part of the sea as his property, and the accused by coming upon that part of the sea was not, in my opinion, entering upon property in the occupation of another within the meaning of section 427 of the Code. But I think the conviction on the ground of mischief should be supported. The evidence and the finding of the Magistrate is that the fish had been enclosed by the net of the complainant, and the Magistrate distinctly finds that the accused entered within the circle of complainant's net and captured his fish and disturbed them. The complainant having enclosed fish within his net had a sufficient property in those fish to entitle him to maintain a civil action against any one who is disturbing that possession. This has been so decided by this Court in the case of *Packeer Tamby v. Siman*.<sup>1</sup> If he has sufficient possession of the fish to entitle him to maintain a civil action, it seems to me that he has a sufficient possession to entitle him to say that the accused when by driving away his fish and preventing him from bringing them to shore has committed mischief against his property. The conviction also can be and should be, in my opinion, supported on the ground that it is justified under the charge for intimidation. The conviction, therefore, in my opinion, is accurate, and I dismiss the appeal.

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*Appeal dismissed.*

<sup>1</sup> 2 *Lórenz* 150.