

ALIWIS, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 135
Trial Division of the High Court
Truk District
July 7, 1961

Appeal from conviction in Truk District Court of malicious mischief in violation of T.T.C., Sec. 398 (prior to amendment by Executive Order 84). The prosecution contends that defendant had dug up crops from complainant's land and had planted his own crops in their place; appellant claims as owner of land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where honest land dispute exists, there does not exist element of malice necessary to constitute crime of malicious mischief, and that criminal court is not proper substitute for adequate civil remedies.

Reversed.

1. Malicious Mischief—Malice

Where accused, charged with malicious mischief, acts in honest belief that he is owner of property which he injures, malice has not been shown beyond reasonable doubt. (T.T.C., Sec. 398)

2. Malicious Mischief—Generally

One accused of malicious mischief may show in defense of act, circumstances of justification or excuse. (T.T.C., Sec. 398)

3. Malicious Mischief—Malice

In criminal prosecution for malicious mischief, there is no malice where act is done in good faith and under honest claim of right. (T.T.C., Sec. 398)

4. Criminal Law—Generally

Criminal law will not redress grievances or settle questions of property where honest differences of opinion are involved.

5. Malicious Mischief—Malice

Where statute defining malicious mischief has been amended to eliminate element of malice, substituting that of mere "unlawfulness," no special malice need be shown thereafter, although criminal statute should not be used as substitute for civil remedies for trespass. (Executive Order No. 84, amending T.T.C., Sec. 398)

Interpreter: FRITZ SOUKICHI
Counsel for Appellant: WANIS R. SIMINA
Counsel for Appellee: ISTARO RABAIRECK

FURBER, *Chief Justice*

This is an appeal from a conviction of malicious mischief under Trust Territory Code Section 398 as it stood before the amendment made by Executive Order No. 84 dated December 23, 1960.

Counsel for the appellant argued that the evidence failed to show the necessary malice on the part of the accused and that, therefore, the latter was improperly convicted. Counsel claimed that the evidence clearly showed that the accused, in digging up the complainant's plants, had acted in the honest and reasonable belief that these plants were on land of which he was the lawful custodian or guardian and on which he had worked for many years without any dispute and that his actions were to protect the ownership of the property. In support of this position counsel cited 34 Am. Jur., Malicious Mischief, §§ 8, 9, 14, and 15.

Counsel for the appellee argued that the evidence clearly established the guilt of the accused since it was shown that he was mad and had deliberately and admittedly dug up plants planted by the complainant. Counsel for the appellee further claimed that the evidence showed that the land where the plants in question were planted was not owned by the accused. In support of his position he cited Wharton's Criminal Law, 12th Edition, Volume II, Sections 1,332 and 1,333.

OPINION

This case involves the proper construction of Trust Territory Code Section 398 as it stood before the amendment made by Executive Order No. 84 of December 23, 1960, took effect—namely ninety days thereafter as provided

by Section 28 of the Trust Territory Code. The Section as it then stood read in part, "Whosoever shall unlawfully, wilfully, and maliciously destroy, damage, or otherwise injure property belonging to another, shall be guilty of malicious mischief, and . . ."

On the undisputed evidence the complainant had first pulled up coconut trees planted by the accused on the land in dispute and then proceeded to plant some things of her own there. When the accused discovered this, the complainant admitted she was the one who had pulled up his plants. The accused thereupon stated that he was going to pull up her plants and proceeded to pull up some.

[1-4] It appears to this court that this is essentially a case of an honest land or boundary dispute, and that, regardless of whether the plants were actually on land which the accused was lawfully taking care of, or were over the line on property owned by the complainant and others, the necessary malice has not been shown beyond a reasonable doubt. Such disputes can be handled far better as civil actions than through criminal proceedings. Under the wording of the Code Section involved which was then in effect, the acts complained of were expressly to be done maliciously in order to constitute the offense and the court holds that under that wording the crime was controlled by the general principles regularly applied to this offense under similar circumstances in the United States and stated in Miller on Criminal Law, Sec. 128(d), in part as follows:

"(a) Justification—Absence of Malice

One accused of malicious mischief may show in defense of his act and for the purpose of disproving malice, circumstances of justification and excuse. Thus it has been held that there is no malice where the act is done in good faith, under an honest claim of right; as, for instance, where one destroyed another's crop, believing in good faith that he owned the land, and intending to

plant a crop for himself; for, as said in an Indiana case, the machinery of the criminal law is not to be set in motion to redress merely private grievances, or to settle questions of property, where honest differences of opinion are involved. . . .”

See also 34 Am. Jur., Malicious Mischief, §§ 14 and 15.

[5] An essential element of the offense not having been proved, it follows that the accused was improperly convicted. 34 Am. Jur., Malicious Mischief, § 13.

Attention of all concerned is directed to the fact that Executive Order No. 84 of December 23, 1960, has now materially changed the section in question and has expressly omitted therefrom the requirement that the acts in question be done wilfully and maliciously. It now simply requires that the destroying, damaging, or otherwise injuring property belonging to another be done “unlawfully” to constitute the crime of malicious mischief and adds as an alternative certain new provisions concerning littering of public places which are not material to a situation like that involved in this case. No determination is made in this case as to how the words of the section as so amended would apply to a situation like that involved here. The amended section would appear to make the crime as therein stated more analogous to the crime of trespass than to malicious mischief as usually understood in the United States. It is regularly held, however, that even such criminal statutes should not be used to try disputed rights in land or as a substitute for other adequate civil remedies for trespass. See 52 Am. Jur., Trespass, § 85, notes 12, 17 and 18.

JUDGMENT

The finding and sentence of the District Court for the Truk District in its Criminal Case No. 1272 are hereby set aside, and a finding of not guilty entered and the accused acquitted.