

1897.
July 14
and 26.

RAHIM v. JUAN.

P. C., Chilaw, 11,772.

Forest produce—Removal of timber from private land—Ordinance No. 1 of 1892.

“Forest produce,” the transit of which may, by Ordinance No. 1 of 1892, be regulated or prohibited by the Governor in Executive Council, is interpreted in the Ordinance to mean “timber cut in any land or property, whether the property of the Crown or any private individual” —

Held, that the judgment in *Marikar v. Dias* (2 C. L. R. 158), that since the passing of the above Ordinance removal of timber without a pass as distinguished from forest produce was not an offence, was due to an oversight of the above interpretation, and is not in accordance with the right reading of the Ordinance.

THE facts of the case sufficiently appear in the judgment.

Dias, C.C., for appellant.

De Saram, for respondent.

26th July, 1897. BROWNE, J.—

At the argument of this appeal before myself it was submitted that the present Acting Chief Justice had come to an erroneous conclusion in the judgment, in pursuance of which the Police Magistrate acquitted the accused on presentation of the complaint and examination of the complainant, and counsel for appellant desired that if it should appear necessary I should submit the appeal presented to the Acting Chief Justice. I did so, and he, allowing appellant's contention, has sent me the following judgment. I respectfully concur in it, and I therefore read it as the judgment upon the appeal.

LAWRIE, A.C.J.—

The history of the legislation regarding the removal of timber grown on private lands seems to be this. In the Ordinance No. 24 of 1848 (to regulate the felling and removal of timber grown on Crown lands in the Island) there was this enactment (section 8): “And, whereas much valuable timber is felled on the Crown lands in this island and removed therefrom without any authority, under pretext that the same has been felled on the lands of private parties; and it is expedient to prevent as far as possible the continuance of these frauds, it is therefore further enacted that it shall not be lawful for any person to remove from his own land or from the land of any other private party any timber which may have been felled thereon without having obtained a permit authorizing such removal,” &c.

This Court construed the 8th section of Ordinance No. 24 of 1848 somewhat strictly.

In a Negombo case reported by *Beling and Vanderstraaten*, page 408, decided by the Full Court (Rowe, C.J., Templer and Morgan, J.J.) on 18th May, 1857, it was held that the act prohibited by the 8th section of the Ordinance was the removal of timber from the land on which it had been felled, and that removal from the premises of a trader in the town of Negombo was not an act which fell within the prohibition.

This was followed two years after by the Full Court (Rowe, C.J., Sterling and Morgan, J.J.), *3 Lorenz, 229*, and in two cases reported in *Ramanathan's Reports, 1877, pp. 180 and 236*; and in *1 S. C. C. 46 and 63*.

The Ordinance No. 24 of 1848 was repealed by Ordinance No. 6 of 1878. The 9th section of it enacted "that it shall not be lawful for any person to remove from his own land or from the land of any other private person any timber which shall have been felled thereon without having obtained a permit authorizing such removal," &c.

The decisions under the Ordinance of 1848 relative to the removal of timber from private lands were applicable to the new Ordinance.

In a case reported in *3 S. C. C. 50* it was held by Cayley, C.J., that a plaint under the Ordinance of 1878 was defective, in that it did not state from whose land the timber was removed, nor did it state that it was removed from the land on which it was felled, and those defects were not cured by the evidence.

Then the Ordinance No. 7 of 1878 was repealed by Ordinance No. 10 of 1885.

Section 46 enacted: "No timber shall be removed from any land without a pass from the Government Agent," &c., and timber was interpreted to include trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed for any purpose or not.

This included the materials of houses, doors, and windows, frames, boats, carts, furniture, everything made of wood grown in Ceylon.

In a case reported in *1 S. C. R. 55* I held that there must be proof of removal from a "land." I intended to decide in the spirit of the decision under Ordinance No. 24 of 1848, beginning with the Negombo case in 1857, and that judgment of mine was given in June, 1890.

By the Ordinance No. 1 of 1892 the 46th section of the Ordinance of 1885 was repealed, and it was no longer a statutory offence to

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remove timber without a permit, but by an addition to section 44 it was enacted that the Governor in Executive Council might regulate the transit of all forest produce or prohibit the moving of forest produce without a pass, and forest produce was interpreted to include "timber cut in any land or property, whether "the property of the Crown or any private individual."

In a case reported in *2 C. L. R. 158* I overlooked the interpretation given by the Ordinance of 1891 to forest produce, and I take this opportunity (the first so far as I remember which I have had) of saying that in my opinion the judgment I then gave was not in accordance with the right reading of the amending Ordinance.

I see from the report that I had not the advantage of hearing counsel in that case, which may partly account for my having fallen into error.

I would set aside the acquittal and remit the case for further proceedings.

The plaint seems to me to require amendment. It asserts that it is an offence under section 45 to remove ebony and other logs and two roof beams from Rajakadaluwa to Chilaw without a pass. The Ordinance does not say so. It gives to the Governor power to regulate the transit and to prohibit the moving of timber cut on private land.

It is not said in this plaint that the Governor has made such a regulation. If he has, the complaint is defective in not setting out the terms and the date of the regulation a breach of which is an offence.

It is premature to give an opinion as to what the prosecution must prove before a conviction can be obtained for removing "timber cut in any land."

It is not necessary to prove the moving from the place where the timber was cut; not subsequent removal from timber yard to timber yard; not the moving of the materials of houses or of furniture from house to house. I would set aside the acquittal and remit for further proceedings.
