

1902.
August 6.

ELLAWALA v. FERNANDO.

D. C., Ratnapura, 23,238.

Mining—Ordinance No. 10 of 1894, s. 6—Opening mine on the strength of a license granted to co-owner—Illegality of act.

A license to open a mine granted under the Ordinance No. 10 of 1894 to a person does not justify the opening and working of it by any other person who owns a share in it.

It would be open to the holder of a license to appoint his co-owner to be his manager or superintendent of the work, in which case the licensee would be responsible for the acts of his manager or superintendent, but the object of the Ordinance would be defeated if the license enabled persons not under the control of the licensee to conduct mining operations on the land.

THE accused, being charged with having opened, worked, and used a mine on a certain land without a license, in breach of section 6 of Ordinance No. 10 of 1894, pleaded that, though he had no license, his partner Kira had one. The Police Magistrate, Mr. T. R. E. Loftus, disbelieved the evidence led on behalf of the accused and convicted him.

He appealed.

Bawa, for appellant.

Rāmanāthan, S.-G., for respondent.

The arguments of counsel, heard on 4th August, 1902, appear in the following judgment:—

6th August, 1902. WENDT, J.—

The appellant has been convicted of having opened, worked, and used a mine without having obtained a license therefor. The offence is said to be punishable under section 6 of Ordinance No. 10 of 1894. That enactment only substituted a new section

for section 11 of Ordinance No. 5 of 1890. The charge should therefore have been laid under the latter Ordinance, and I order it to be amended by substituting the words " section 11 of Ordinance No. 5 of 1890 " for the words " section 6 of Ordinance No. 10 of 1894. "

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It would seem that one Bahardeen, with two others jointly, took a lease of an undivided half of the parcel of land upon which the offence is alleged to have been committed. Bahardeen then took out a licence under the Ordinance and opened and worked sundry mines for gems. One Kira, claiming a right in respect of the other undivided half of the land, also took out a license and commenced operations on the land. The appellant claimed to have purchased an undivided quarter out of the half leased to Bahardeen from some person who claimed adversely to the lessor, but the appellant's right was not admitted by Bahardeen. The appellant one day went down to the land with a number of men, and proceeded to open and work a mine in spite of the protests of Bahardeen and Kira.

His defence to the present prosecution was that he did this as Kira's partner. This was denied by Kira, who was called as witness for the defence, and the defence therefore failed. It was, however, argued on behalf of the accused that once a license had been granted to any person in respect of any land, it authorized any other person owning a share of that land to open mines on it without being under the necessity of taking out another license, and this although the alleged co-ownership was denied by the licensee.

I am clearly of opinion that this contention cannot be supported. Section 5 of the Ordinance requires the applicant for the license to state the name and description of the land, the nature of the right by which he claims to open a mine on it, and the names and residences of himself and of the persons under whose management or superintendence the mine is to be worked. If the applicant ceases to have an interest in the mine, or if a change takes place in the management or superintendence of it, the applicant is to make a further declaration to that effect. Section 4 provides that the Government Agent may issue to any person establishing a *prima facie* right to enter upon and open, work, or use a mine on any land, a license under the Ordinance. A form of license is prescribed, which shows that the right granted by the license is limited to the licensee. No doubt the term " person " in the Ordinance includes any association or body of persons, but in that case the Ordinance regards them as all working together. Accordingly a joint stock company may apply by its directors or

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August 6. number duly authorized by them, but I do not see how, under the
WENDT, J. authority conferred by the license on the owner, say, of half of
the land, the owner of the other half could insist by mere force of
his co-ownership on opening and working mines independently
of the licensee. The object of the Ordinance is to have some
definite person responsible for the operations on the land. He
may be required to fulfil certain conditions in his working under
the license and to give security for such fulfilment, and the license
is liable to be revoked upon breach of any such condition. The
object of the Ordinance would be defeated if the license enabled
persons not under the control of the licensee to conduct mining
operations on the land. It would, of course, be open for the
holder of a license to appoint his co-owner to be his manager or
superintendent of the work, but in that case the licensee would
be responsible for the acts of his manager or superintendent. If
the application be that of a partnership or company or body of
co-owners, that would undoubtedly need to be stated in the appli-
cation.

In the present case the applicant might or might not have a good
title to a fourth of the land, but that will not entitle him to open
mines on the land without a license, any more than he could have
done so if he had claimed to be the exclusive owner of the whole
land.

The appeal is dismissed.
