KARUNARATNE *v.* BOTEJU.

1904.

P. C., Colombo, 84014.

January 1

Ordinance No. 20 of 1865. s.-2—" Stone or other substances "—Removing sand from seashore.

The removal of sea sand from the seashore near public roads, after notice of an order of prohibition by a Government Agent, is an offence under section 2 of the Ordinance No. 20 of 1865.

THIS was an appeal by the Attorney-General against an order of the Police Magistrate acquitting the accused, who had been charged with removing sand from the seashore between the point where the railway line approaches the beach at Kollupitiya (Colombo) and the Old Police Station at Galle Buck, in breach of the notice of prohibition of such removal given by the Government Agent of the Western Province in the *Ceylon Government Gazette* of August 28, 1893, in terms of Ordinance No. 20 of 1865, section 1.

Maartensz, *C.C., for appellant.*

Walter Pereira, for respondent.

18th January, 1904. MONCREIFF, J.—

The Government Agent is empowered by the section in question to prohibit " the removal of stones or other substances from the seashore adjoining or near public roads and thoroughfares. " The

1904. *January 18.*

MONCREIFF, J.

learned Magistate thought that " other substances " did not include sand, and acquitted the defendant.

The matter does not strike me in the same way. Sand is composed of broken rocks, chalcedony, shells, coral, and is for the most part of the same substance as stone. If it were not so, at what point of diminution does a stone cease to be of the same substance as a larger stone and become liable to be removed from the seashore in spite of prohibition?

Again, if sand were of a different substance, it seems to me absurd that the Legislature should forbid through the Government Agent the removal of stones from the seashore and permit the removal of the seashore itself. The seashore is in some places almost entirely composed of sand. The Legislature must have a smaller share of wisdom than I credit it with if it did not mean by this provision to give the Government Agent power to prohibit the removal of every substance going to form the seashore which can add to the support afforded by the seashore to the adjacent land.

The argument sought to be drawn from the words in the section of the Ordinance—" break or remove stone or other substances " —might have been of some avail if the word used had been " and ". It is " or "; consequently no such argument can be drawn from the words.

The fact that a repealing Ordinance has been drafted in which sand is specially mentioned does not necessarily show more than that somebody thought it best to put an end to the doubts suggested by those who contended for the right to remove sand.

Of the cases cited in argument I think that *Casher v. Holmes* (2 B. & Ad 597) scarcely applies. English authorities do speak of the rule of *ejusdem generis*. Bowen (L. J.) seems to consider it a rule of common sense rather than of law. But, if it is a rule, it is only applicable when the context shows such to have been the intention of the Legislature. In *Ex parte John Hill, 3 C. & P. 225*, Bayley, J., held that there was a penalty for cruelty, to " any horse, mare, gelding, mule, ox, cow, heifer, steer, or other cattle;" but not cruelty to a bull, which is not *ejusdem generis* with the class " ox, cow, heifer, steer." Perhaps this case is not fully reported, but as it stands I do not understand it. From *Skinner v. Shew, 1 L. R. Ch. (1893) 424*, where the words " by circular, advertisement, or otherwise " were under discussion, it is clear that the general words are to be governed by the intention expressed in the terms of the provision, and not by any dogmatic rule of *ejusdem generis*.

The acquittal in this case is set aside, and the case is sent back to be proceeded with in due course.