1925.

Present : Jayewardene A.J.

WANIGATUNGA *v.* SINNO APPU *et al.*

68—P. C. Galle, 23,952.

Public stream—Theft of coral from the bed—Crown property.

The bed of a public stream belongs to the Crown. A person who removes coral from under the bed of a public stream is guilty of theft.

APPEAL from a conviction by the Police Magistrate of Galle. The accused were convicted of the theft of corals of the value of Rs. 75, the property of the Crown. The case for the prosecution was that the accused had dug the coral stones from under the bed of a stream called Mawakada-ela, which was a Crown ela. The learned Police Magistrate found that the ela was Crown property maintained by the Village Committee, and that the accused had removed coral stones from under the bed of the stream.

The accused appealed.

H. V. Perera (with him *R. C. Fonseka*), for appellant.

Mervyn Fonseka, C.C., for respondent.

April 9, 1925. JAYEWARDENE A.J.—

In this case the first four accused have been convicted of the theft of coral stones of the value of Rs. 75, the property of the Crown. The fifth and sixth have been convicted of the abetment of the offence.

The case for the prosecution was that the accused had dug out coral stones from under the bed of a stream called the Mawakada-ela; and had appropriated them. The accused in their defence alleged that the coral stones were taken out not from under the bed of the stream, but from pits dug on the banks of the stream. They also denied that the stream was a " Crown ela." The learned Magistrate found that the accused had removed coral stones from under the bed of the river, and that there was proof that the ela was Crown property and was being maintained by the Village Committee. He therefore convicted the accused. The learned Magistrate finds that there is a stratum of coral two or three feet below the surface of the ela bed, and that the accused had reached the coral by means of a tunnel running into the strata from a pit dug on the bank. In view of this finding of the Magistrate the question arises as to

whether the coral stones are the property of the Crown. According to our law which is the Roman-Dutch law, streams are either public or private. In the present case when the witnesses for the prosecution speak of the ela in question as being a "Crown ela," I think, what they mean is that it is a "public stream." Therefore, the question arises to whom does the soil under the surface of the bed of a public stream belong? To answer this question it has first to be determined to whom under our law the bed of a public stream belongs. Public streams include all perennial streams whether navigable or not, which are capable of being applied to the common use of riparian proprietors (*Voet 1, 8, 8*). Other streams are considered private.

According to the Roman-Dutch law it would appear that beds of public streams belong to the Crown (*Grotius 2, 1, 25; 2, 9, 9* and *Van Leuwen 2, 1, 12*).

The Roman law was, however, different, and beds of rivers under the latter belonged to the adjacent landowners *usque ad medium filium* or *filium fluminis*. *Digest XLI., 1, 7, 3, 4, 5.* "The bed of the river, so long as the river flowed over it was public; or rather the use of it was public, while the soil itself was the property of the private individuals to whom the soil of the banks belonged, and therefore when the bed was dried, when it ceased to be subject to public use, the private owners resumed the rights of ownership over it." *Saunders' Justinian, 5th ed., p. 99.* Thus, if persons who do not own land bordering a public stream build anything in the stream—that is in its bed—the owner of the land on the banks of the stream becomes entitled to it according to the rule *quidquid inædificatur solo cedit*, and any portion of a river bed which is no longer covered by water belongs to the owner of the adjacent land: *Voet 1, 8, 9*, but by the Roman-Dutch law the building would belong to the Crown and not to the owners of the banks.

Ceterum, quia moribus nostris, et aliarum gentium maris littora, et flumina Regalibus seu Domaniis Principum adnumerantur, non ita, si navigationem et ejus sequelas excipias, communis omnibus usus est, neque piscari retibus in flumine quique licet, multoque minus, extra ripæ munitionem, ædificare in fundo fluminis, aut in maris littore, aut aquam ducere ex flumine, aut extruere molendina, nisi nominatim id a Principe, vel eo, cui demandata dominiorum cura, concessum fuerit; sic ut illa veniæ impetratio, quæ ex jure Romano prudentiæ erat, nunc absolutæ necessitatis sit (*Voet 1, 8, 9*).

According to Voet even the dried up bed of a river belongs to the Crown (*Moribus nostris magis est ut alveus fluminis desertus fisco cedat* (*41, 1, 18*); also *Grotius 2, 9, 9*, but see *Grotius 2, 9, 15*. On these authorities I am compelled to hold that the bed of a river under our law belongs to the Crown and not to the adjacent lands. Perhaps there is a distinction in these cases between navigable or large and non-navigable or small rivers. This point has not been

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fully argued before me, and so far as I can find out for myself, Voet does not draw such a distinction; although the passages from Grotius and Van Leeuwen might indicate the existence of one. For the purpose of this case I hold that the bed of a public stream or river is the property of the Crown. Therefore, the bed of the Mawakada-ela is Crown property. If the bed belongs to the Crown, land immediately below it must also belong to the Crown. *Cujus est solum ejus est usque ad coelum et ad inferos.* The coral removed from under the bed of the ela is therefore the property of the Crown.

The convictions are therefore right, and must be affirmed.

The appeals are dismissed.

Appeal dismissed.