
Present: Pereira J.

1913.

VIDAN *v.* PANDITARATNE *et al.*

897—898—P. C. Nuwara Eliya, 7,617.

*Game Protection Ordinance—Exclusive right of fishing in a stream—
License from Government Agent.*

Where the exclusive right to take from a stream the fish mentioned in Schedule III. to "The Game Protection Ordinance, 1909," has been conceded by the Governor to a particular fishing club, the provision as to a license from the Government Agent under section 15 of the Ordinance would still apply to such stream, unless a valid rule is made by the club providing for a license in substitution for the license under section 15.

THE facts appear from the judgment.

H. J. C. Pereira, for first accused, appellant.

Hayley, for respondent.

Cur. adv. vult.

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It is difficult to understand the conviction in this case. It purports to be a conviction of an offence punishable under section 19 (2) of Ordinance No. 1 of 1909; but the recitals in it are recitals supporting a conviction under section 17 of the Ordinance. Both these sections make it an offence (omitting words immaterial to this inquiry) to take fish of a particular kind without a license. Section 17 makes it also an offence merely to fish for fish of the kind referred to without a license, while section 19 (2) creates no such offence. Hence, the prosecution in case No. 7,590 of the Police Court of Nuwara Eliya, which I have already disposed of, could not be instituted under section 19 (2), and unless there was some defect in the rules requiring the license mentioned in section 17, this prosecution might have been instituted under section 17. However, I have the assurance of the respondent's counsel that this prosecution is altogether one under section 19 (2), and he maintained that the license referred to in the conviction is the license provided for by section 15 of the Ordinance. The prosecution is *prima facie* a prosecution under section 19 (2), but I am not prepared to accede to the contention that the license referred to in the conviction is the license provided for by section 15. That section provides for the issue of a license by the Government Agent of a Province to be in force within the limits of his Province, and here I may observe that, although under the interpretation clause of the Ordinance the expression "Government Agent" includes an Assistant Government Agent, the expression as used in section 15 requires a strict construction, as the words in the context—"of any province, within the limits of such province"—occurring immediately after the expression "Government Agent" repel the interpretation provided for by the Ordinance, the same being, of course, expressly subject to what appears "in the context." The license referred to in the conviction is a license from (to quote from the conviction) "the Assistant Government Agent of Nuwara Eliya, Honorary Secretary of the Ceylon Fishing Club." The reference here clearly is to the license provided for by rule 3 of the "Rules of the Ceylon Fishing Club" produced in evidence and filed of record. As I have already held in the case referred to above, rule 3 is *ultra vires*, and therefore the conviction in this case in its present form cannot stand. The question is whether I should amend the conviction and retain the sentence, if I am satisfied on the evidence that the accused have taken fish without the license provided for by section 15.

The stream from which the accused are charged with taking fish is the stream known as the "Ambawela stream." The exclusive right to take from this stream the fish mentioned in Schedule III. to the Ordinance has been conceded by the Governor to the Ceylon Fishing Club. The Ordinance provides that when such a right has

been conceded to a club, that club may make rules for the preservation, &c., of the fish to which the concession applies; but, curiously, at the time the exclusive right to take fish from certain streams was conceded to the Ceylon Fishing Club, rules for the prosecution, &c., of fish under section 16 (2) of the Ordinance had already been made by the club, as appears from the notification of December 16, 1909 (see Epitome of Proclamations, &c., during 1909, page 260), and the concession was expressly made subject to those rules. Whether that proceeding was in order, or whether Ambawela stream is included in the list of streams mentioned in that notification or in the notification dated May 10, 1910 (see Epitome for 1910, page 75), I shall not pause to inquire. On both points I shall assume the condition of affairs to be in favour of the prosecution; but what is the effect, on the provision as to licenses to be obtained from the Government Agent, of the concession of an exclusive right under section 16 (1)? Before proceeding to consider this question, I may mention that it is open to the Governor to make a concession under section 16 (1), subject to such conditions as to him in Executive Council may appear fit. The concession in the case of the streams mentioned in the notification of December 16, 1909, was expressly made, as already observed, subject to certain rules made by the club. Those rules were, therefore, binding on the concessionaires, but, clearly, as many of the rules as were *ultra vires* had no binding effect on the public at large, and, as pointed out by me in case No. 7,590, rule No. 3 was *ultra vires* (albeit the Assistant Government Agent happened to be the Honorary Secretary of the club), and no prosecution could therefore be maintained under section 17 as against a member of the general public. Now, as to the effect of a concession under section 16 (1) on the provision as to licenses under section 15. It has been argued that the moment a concession is made in respect of a stream, section 15 of the Ordinance ceases to have any operation with reference to that stream, and that, then, the licenses to be obtained for fishing are none other than the licenses provided for by sub-section 3 (a) of section 16. I was at first inclined to take this view, but on a careful consideration of the different provisions of the Ordinance, I think that, when a club to which a concession is granted fails to make a valid provision for the issue by itself of licenses, the provision as to licenses in section 15 continues to hold good. Such a club is, by sub-section (3) (a) of section 16, authorized to make rules "for the issue of licenses by itself either in addition to, or in substitution for, the licenses prescribed by section 15." In the present case no valid rule has been made by the Ceylon Fishing Club for the issue of licenses by itself in substitution for the licenses provided for by section 15, and none in addition to such licenses. Therefore, I take it that, as regards the Ceylon Fishing Club and the Ambawela stream, the provision as to licenses of section 15 stands. It has neither been

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1913. superseded nor added to, and I agree with Mr. Hayley that, in
PERRIRA J. spite of the concession to the club, a person may be prosecuted
Vidan v. under section 19 (2) for taking fish from the Ambawela stream
Panditaratne without the license required by section 15. But in such a case the
matter is one that concerns the Government Agent of the Province.
He or somebody instructed by him should, strictly speaking,
prosecute. As stated above, the present conviction is wrong and
cannot stand, and I do not think that, in the circumstances of the
case, it should be amended by this Court. Dealing with the convic-
tions of the first and third accused in appeal and of the second
accused in revision, I quash the convictions and all proceedings had
in the Police Court, leaving it to the Government Agent to re-prosecute
the accused, if so advised, under section 19 (2) of the Ordinance for
taking fish from the Ambawela stream without the license required
by section 15.

Quashed.
