

1944

*Present: Moseley S.P.J.*THE ATTORNEY-GENERAL *v.* PANNIKAM *et al.**M. C. Anuradhapura, Nos. 9,132 and 9,141.*

Elephant—Capture without licence—Property of Crown—Fauna and Flora Protection Ordinance, Cap. 325, s. 16 (2).

An elephant, which is captured without the authority of a licence, is the property of the Crown, and a Court has no power to order its delivery to the offending captor.

APPPLICATION to revise an order made by the Magistrate of Anuradhapura.

E. H. T. Gunasekera, C. C., in support.

N. E. Weerasooria, K.C., (with *Kanapathipillai*), for 2nd respondent.

January 21, 1944. MOSELEY S.P.J.—

This is an application to revise the order of the learned Magistrate made in two prosecutions under section 20 of the Fauna and Flora Protection Ordinance (Chapter 325) for taking in each case an elephant in breach of the conditions of a licence.

In each case the accused pleaded guilty and a fine was imposed. In case No. 9,132 the fine was paid by the accused in case No. 9,141 who was then allowed to take the elephant which was the subject of the charge in case No. 9,132. Similarly in case No. 9,141 he was allowed to retain possession of the elephant which he had taken unlawfully.

Now section 16 (2) of Chapter 325 provides that an elephant taken in these circumstances shall be the property of the Crown. It would appear, therefore, that the order made in each case in regard to the disposition of the animals was illegal. That part of the order must therefore be deleted.

The accused in case No. 9,141 is to produce the two animals, if they are still in his possession, before the Magistrate of Anuradhapura on or before February 18, 1944. If the animals are no longer in his possession he should attend the Court on that day and give information as to their whereabouts as far as they may be known to him.

Application allowed.