

Present: Porter J.

SUB-INSPECTOR OF POLICE *v.* WIJESINGHE

550—*P. C. Hambantota 5,301.*

Game Protection Ordinance, No. 1 of 1909—Killing game trespassing on cultivated land in night—Information to headmen.

Section 13 of Ordinance No. 1 of 1909 must be read along with section 10; and consequently when animals (specified in section 10) trespassing upon cultivated lands are killed, information should be given forthwith to the nearest headman, even when they are killed in the night.

THE facts appear from the judgment.

Soertsz, for appellant.

No appearance for respondent.

October 20, 1922. PORTER J.—

In this case there is no dispute as to the facts, which are as follows:—

The accused shot and killed a sambur which was trespassing on his cultivated fields at night time. He was convicted of a breach of section 10 of Ordinance No. 1 of 1909. Section 10 reads as follows: "It shall be lawful for any person to kill, shoot at, destroy, pursue, capture, or attempt to capture, without a license, any tusker, elephant, or buffalo while trespassing in or upon any cultivated land, or any game when so trespassing whether during the close season or at any other time. Provided that information of the capture or destruction of such animal shall be forthwith given to the nearest headman or police officer, and provided that in the case of a tusker being so captured or destroyed, the tusker and its tusks shall be held to be the property of the Crown."

It has been argued that as the killing in this case took place at night that section 13 applies, and that section 13 contains no provision penalizing the omission to give information when the destruction

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takes place at night. Section 13 runs thus: " It shall not be lawful for any person to shoot at any game, unless trespassing in or upon any cultivated land, between sunset and sunrise, or at any time to lay or spread any trap, snare, net, or pitfall, except in or upon any cultivated land, for the purpose of capturing or destroying any game or jungle fowl; and any person who shall shoot or attempt to shoot any game, or lay or spread or attempt to lay or spread any trap, snare, net, or pitfall, for the purpose of capturing or destroying any game or jungle fowl in contravention of this section, shall be guilty of an offence, and be liable on conviction to a fine not exceeding one hundred rupees, or to simple or rigorous imprisonment for a period not exceeding three months, or to both."

I think that section 13 merely sets out when it is not unlawful to shoot at night. That is to say, that, except in certain circumstances, it is unlawful to shoot at any game at night.

Section 13 must be read along with section 10.

It is difficult to see why the destruction need not be reported because it occurred at night. The only other question is one of fact, i.e., did the accused give information forthwith? The evidence of one Punchi Baba is to the effect that on the instructions of the accused he went to the house of the police officer of Hoggala to report the shooting of this sambur. On arriving there on the morning of the 12th he found that the police officer had gone to Hambantota. So he left the message with the police officer's wife. I think that the accused has complied with the law requiring him to give information forthwith, and for this reason would allow this appeal and set aside the conviction.

Set aside.
