

1922.

*Present : De Sampayo J.***POLICE SERGEANT v. MUTTLIAH.***580—P. C. Anuradhapura, 1,746.**Game Protection Ordinance, No. 1 of 1909—Possession of flesh of indigenous deer.*

Provisions of section 19 of Ordinance No. 1 of 1909 apply to animals not indigenous to Ceylon. The possession during the close season of the flesh of indigenous deer is not an offence under section 19.

THE facts are set out in the judgment.

J. Joseph, for accused, appellant.

November 9, 1922. DE SAMPAYO J.—

The charge against the accused in this case was that on September 13 last he was found during the close season to be in possession of the flesh of a beast, to wit, deer, in breach of section 19 (3) of the Ordinance No. 1 of 1909. He was convicted, and he appeals on a point of construction. The evidence was that the close season is from June 1 to October 31, and consequently the accused's possession of flesh was during the close season. The prosecutor was a constable who said that he searched the accused's house on the day in question, and found about 30 lbs. of dried meat in a gunny bag, and he further swore that it was deer flesh, as he had had some himself before. The ground of appeal is that under the provision in question the Ordinance aims at possession of flesh not of indigenous beasts, but of foreign beasts, which are specified in schedule III. of the Ordinance, and I think the contention on behalf of the accused is right. The group of sections included in Part III. of the Ordinance, of which section 19 is one, appear to have reference to birds, beasts, and fishes which are not indigenous to Ceylon. The whole part is headed "birds, beasts, and fishes not indigenous to Ceylon," and on an examination of schedule III., to which section 19 refers, it is clear that all the birds, beasts, and fishes enumerated there are of a foreign variety. For instance, under the head "birds" we have pheasants, English partridge, French partridge; and under the head "beasts" are roe deer, fallow deer, and English hare. It appears to me that, where some species of animals are

found, both in Ceylon and elsewhere, the word "bird or beast" is qualified by such expression as English, French, &c., clearly distinguishing the animal's flesh of which it is an offence to possess. This point was submitted to the Police Magistrate, but he remarked that in his opinion that the expression "deer" was meant by the framers of the Ordinance to apply to all deer whatever found in Ceylon, but I think the Police Magistrate was wrong here. The evidence of the constable fell far short of proof that the flesh found in the possession of the accused was the flesh of a beast not indigenous to Ceylon, because there are indigenous varieties of deer in Ceylon, and the further evidence given by the constable when he said that he knew it to be deer, because he had eaten some before, shows that all the time he was referring to the flesh of the ordinary deer found in the forests of Ceylon. I think the prosecution failed to establish what was necessary under the section under which the charge was framed.

The conviction is therefore set aside.

Set aside.

1922.

DE SAMPAYO
J.

Police
Sergeant
v. Mutiah