Present : Schneider J. 1928

MUDALIYAR, WELLABODA PATTU *v.* SILVA.

770—P. C. Balapitiya, 11,244:

Seashore—Removal of coral from bed of sea—Prohibition by Government Agent—Meaning of the word "removal"—Ordinance No. 12 of 1911, ss. 5 and 6.

A Government Agent has no power to prohibit the removal of coral from the bed of the sea. The word "removal" for the purposes of the Seashore Protection Ordinance means moving from a place where a thing is found.

APPEAL from a conviction by the Police Magistrate of Balapitiya. The accused was charged with having illicitly collected sea coral stones from the seabeach at Akurala within an area prohibited under section 5 of Ordinance No. 12 of 1911.

Rajapakse, for accused, appellant.—The scope of sections 3 and 5 must be distinguished. Under section 3 the Governor may prohibit the removal of sand or coral from certain proclaimed areas of the

1928

Mudaliyar, Wellaboda Pattu v. Silva

seashore or from the bed of the sea contiguous thereto. Under section 5 the Government Agent may prohibit the removal of such from certain particular spots on the seashore *only*.

The charge and conviction under section 6 are based upon section 5. What is punishable under section 6 is the *removal*. The plaint, evidence, and judgment refer to the *collection* of coral by the accused.

Moreover, the *removal* must be the taking away of sand, coral, &c., from the area or spot to a place outside such area or spot. Otherwise, every step taken by a person walking on the seashore of such area or spot will be an offence, because a certain quantity of sand is displaced or dislodged from its position.

Further, the evidence is vague and meagre. There is no legal proof that the spot is a prohibited one, and the Government Agent has no power to prohibit the removal of coral from the bed of the sea. Only the Governor may do so.

Basnayake, C.C., for respondent.—The conviction is under section 6, and therefore the accused must be deemed to have been punished for the removal. Collection of coral is tantamount to a removal of coral within the meaning of the Ordinance. It is not necessary that the substance should be removed to a place outside the area as long as its position is shifted. (See section 7.)

The Police Headman says orally that the area is a proclaimed one.

Counsel also referred to *Karunaratne v. Botejn.*[1]

December 18, 1928. SCHNEIDER J.—

Counsel for the appellant based his argument of this appeal on the assumption that the conviction was for the removal of coral in contravention of a prohibition under section 3 of the Seashore Protection Ordinance, 1911 (No. 12 of 1911). But in fact the conviction is not for a removal, as I shall presently point out. He submitted two objections to the conviction. He contended first that the removal contemplated in the Ordinance is a removal or transporting from within a proclaimed (section 3) or prohibited (section 5) area to a place outside such area, and that there was no evidence of any such removal.

He next contended that there was no evidence that the spot or place from which the coral is alleged to have been removed is one coming within a prohibition made under section 5.

With the first of his contentions I am unable to agree. The word "remove" with its variations used in the Ordinance must be given the meaning the word bears in ordinary language of "to take off or away from the place occupied; to change the situation of; to convey to another place." The language of the Ordinance

[1] *7 N. L. R. 127.*

does not lend any support to his contention that the conveying must be to a place outside a given area. The object of the Ordinance and its history also appear to be against his contention. The present Ordinance was enacted in place of the Ordinance No. 20 of 1865, which it repealed (section 2). That Ordinance was intituled " An Ordinance to provide against the removal of stones and other substances from certain parts of the seashore." It was while the present Ordinance was in draft form, it would appear, that the case of *Karunaratne v. Boteju*[1] came before this Court on appeal. It was contended there, but unsuccessfully, that " other substances " did not include sand. Moncrieff J. in the course of his judgment said : " Again, if sand were of a different substance, it seems to me absurd that the Legislature should forbid through the Government Agent the removal of stones from the seashore and permit the removal of the seashore itself. The seashore is in some places almost entirely composed of sand. The Legislature must have a smaller share of wisdom than I credit it with if it did not mean by this provision to give the Government Agent power to prohibit the removal of every substance going to form the seashore which can add to the support afforded by the seashore to the adjacent land. "

The observation indicated that he then took the view that the object of the Ordinance was the protection of land adjacent to the seashore.

In the present Ordinance the object of the Ordinance as set out in the preamble is to make better provision for " the prevention of damage to land bordering the sea, and buildings thereon, caused by the removal of sand, stone, coral, and other substances from the sea and seashore. "

It should be noticed that the removal, according to this preamble, is from the sea and seashore, not from there to some other place. The language used in section 3 is to the same effect. It speaks of an area " from or over which no sand, stone, coral, or other substance may be removed. " The words " over which " clearly indicate that the removal from one place to another place, even within the area, is not permitted.

Section 7 puts the matter beyond any controversy. It enacts that removal " shall include the doing of any act upon any property whether belonging to any person or persons whomsoever or otherwise, which causes the disturbance or displacement of coral, &c., on or from any place. " It would appear, therefore, that removal for the purposes of the Ordinance means moving from the place where the thing is to be found.

[1] *7 N. L. R. 127.*

1928

SCHNEIDER J.

Mudaliyar, Wellaboda Pattu v. Silva

As the act alleged to have been committed is said in the plaint to be in contravention of section 5, I will examine that section in detail. It empowers the Government Agent of a Province to prohibit the removal of coral, &c. "from any spot or place on the seashore within the Province adjoining or near any public road, thoroughfare, public work, or public building, or adjoining or near any part of the Ceylon Government Railway."

It makes his judgment conclusive whether such removal will injure the object the protection of which is contemplated.

And it provides that notice of such prohibition shall be given by such means as shall seem to him likely to give sufficient publicity thereto.

There appear to be two main reasons why the conviction in this case cannot be sustained.

The evidence is altogether of a vague character. The prosecution was initiated, with the authority of the Government Agent of the Province, by the Mudaliyar of the pattu within which the act is alleged to have been committed.

His plaint was that the appellant "did illicitly collect sea coral stones from the seabeach at Akurala within the area prohibited under section 5 of the Ordinance."

He gave evidence which I will summarize as follows :—He received information that a large number of people "were collecting coral stones and heaping them up." He proceeded to the spot with the Police Officer of Seenigama. On arrival at the spot he saw six or eight men and about seven women, girls, and boys "putting out coral stones." On seeing him they ran away. Close to the spot where he stopped his car on the high road, which is 25 feet from where the men and women were, he saw two carts halted and two men putting coral stones into them. Seeing him they too ran away. He chased after the men on the beach and one of them was arrested. He is the accused. A fork, mamoty, and a basket were taken into custody, presumably found at the spot on the beach where there were seven heaps of coral. He said the fork, &c., had been left behind by the accused, and that the accused himself assisted in collecting the coral and putting the same into the carts. Both these statements are mere conjecture, because his evidence in substance is that the accused was among those on the beach at the time he arrived and who ran away on seeing him. He could not possibly have actually seen the accused putting the coral into the carts. He said one of the carts contained about 25 and the other a few baskets of coral. Upon this evidence the charge framed was that the accused "illicitly collected sea coral stones from the sea-beach and thereby committed an offence punishable under section 6 of the Ordinance." It should be expressly mentioned that the Mudaliyar did not state that the place was within a prohibited area.

The only other witness called for the prosecution was the Police Officer of Seenigama. His evidence was in substance the following; He accompanied the Mudaliyar. As the car in which they travelled stopped, some men and women ran away "from near the place where the coral stones had been collected," and the accused, "who was filling a basket with coral stones from a heap with a mamoty also began to run, dropping the mamoty as he did so. The heap of coral near which the accused was was worth about 75 cents to a rupee. He chased and arrested the accused. The place where the coral was being collected was about 20 to 25 fathoms from the high road, and anyone going along it could see "the stones being put out and being collected." "This" (vaguely) "is a proclaimed area."

The defence was that the accused had purchased one heap of the coral from some person named, but I need not consider the defence as I agree with the Magistrate that it appears to be false.

The Magistrate seems to have convicted the accused of the charge of illicitly collecting coral to which I have already referred. I say "seems," because in the judgment there is no description of the offence given. It only states that the verdict is that the accused is guilty under section 6 of the Ordinance. In the statement of his reasons he speaks no less than twelve times of the accused having illicitly collected coral stones, as if the offence consisted of collecting. He appears not to have considered what it is the Ordinance has made an offence.

Imparting to the evidence for the prosecution the meaning most favourable to the prosecution, its effect is that the men, women, and children seen by the Mudaliyar and the Police Officer had been fishing out from the bed of the sea coral which they had collected into seven heaps, and some coral—not necessarily the coral so collected—had been put into the carts.

Assuming that I accept the evidence as proving the "removal" within the meaning of the Ordinance, of the coral from the sea bed, that discloses no offence. A Government Agent has no authority under the Ordinance to prohibit such removal. Under section 5 he can prohibit removal only from the seashore. His authority to do that alone is in contrast with the authority conferred on the Governor under section 3, by proclamation to prohibit removal from or over any part of the seashore or from "the bed of the sea." The Legislature, for some reason, had refrained from vesting a Government Agent with that power.

Then assuming that the coral had been removed from the seashore, there is no evidence such as the law will accept that the spot within an area rightly prohibited by the Government Agent. The virtual complainant, the Mudaliyar, does not say in his evidence that it is within a prohibited area. The Police Officer says that it is within

1928

SCHNEIDER J.

Mudaliyar, Wellaboda Pattu v. Silva

a " proclaimed area, " that is, proclaimed by the Governor, under section 3, which is not the charge in this case. I must assume that a Government Agent's prohibition will be in writing. That writing must be produced to prove the prohibition, or secondary evidence when admissible. The oral evidence of the Police Officer is wholly insufficient. There is no evidence whatever of the notification of the prohibition by the Government Agent. Before the accused can be convicted the prohibition and its notification must be properly proved. That has not been done.

I am averse from sending the case back to enable the prosecution to produce the necessary evidence that the removal was from a prohibited area, because even if the necessary proof is forthcoming I would view with great suspicion any evidence that may now be produced to prove that the coral had been collected from the sea-shore and not from the sea bed as the evidence now on record is.

Furthermore, the value of the coral traced to the accused is said to be only 75 cents.

I set aside the conviction and acquit the accused.

Set aside.