1921.

Present : De Sampayo J.

THE FOREST RANGER, CHILAW, *v.* FERNANDO.

948—P. C. Chilaw, 11,339.

Seashore—Is it land at the disposal of the Crown ?—Forest Ordinance, No. 16 of 1907—Res communis—*Sea sand—Forest produce.*

The seashore is not "land at the disposal of the Crown" within the meaning of the term in the Forest Ordinance, No. 16 of 1907. It is *res communis*, the use of which is open to the whole community, though the Crown has the right of control on behalf of the public.

Sea sand is not "forest produce" within the meaning of the Forest Ordinance. The term "sand" in regulations framed under section 21 (c) of the Forest Ordinance does not refer to sea sand.

"The land being vested in the Local Board, it ceased to be a 'forest' if it was one before, and the sand is not 'forest produce,' and the removal of it is not a forest offence."

THE facts appear from the judgment.

R. L. Pereira, for accused, appellant.

Jansz, C.C., for respondent.

Cur. adv. vult.

[1] *(1912) 14 N. L. R. 145.* [2] *(1921) 21 N. L. R. 134.*

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This is a curious case, and I think the point of view on which the Police Magistrate proceeded is wholly erroneous. The complainant is the Forest Ranger, and the accused is the proprietor of a coconut estate adjoining the seashore at Chilaw. The charge against the accused is that in the year 1919 he removed, without a permit, a certain quantity of "forest produce," namely, sea sand, from the seabeach at Chilaw in breach of section 21 of the Forest Ordinance, No. 16 of 1907. It is rather startling to be told that the seabeach is a forest under the jurisdiction of the Forest Department, and that sea sand is forest produce. Of course, if the law so defines them, there is nothing more to be said, but I do not think that the law has done this. No doubt the Ordinance defines "forest" as all land at the disposal of the Crown. But the seashore is not land at the disposal of the Crown in this sense, though the Forest Ranger takes upon himself to say "the seabeach belongs to the Crown." It is *res communis*, the use of which is open to the whole community, though, of course, the Crown has the right of control on behalf of the public. Moreover, this particular seashore appears to me to be vested in the Local Board of Chilaw—a point which I shall deal with a little later. The delay of two years in instituting this prosecution appears to be due to a protracted correspondence between the Local Board and the Assistant Government Agent with regard to the rights and powers of the Local Board in this connection. The Local Board appears to have thought that they had no right over this part of the seashore, and were afraid to act in this matter. This correspondence ended in the Local Board deciding not to take action, and handing over the matter to the Forest Department, which, accordingly, boldly stepped in and assumed a power which I think it has not.

Again, "forest produce" is defined as (1) trees and leaves, flowers and fruits, roots, timber, &c.; (2) plants not being trees, including grass creepers, &c.; (3) tusks, horns, birds' nests, &c.; and (4) peat, surface soil, rocks, minerals, &c. It will be seen that sea sand does not come within the definition. It was suggested that it came under the description of "surface soil." But sea sand is not soil in the ordinary acceptation of the term. Mr. Jansz, C.C., for the respondent, says that a mistake has been committed, and the charge is defective in not referring to regulation No. 2 of chapter IX. of the regulations framed under section 21 (*c*) of the Forest Ordinance, which authorize the Governor in Council to make regulations, *inter alia*, for regulating or prohibiting the collection and removal of forest produce. In the schedule to these regulations "sand" is included among "minor forest produce." But in my view "sand" in that context is not the same thing as "sea sand," and I think the regulations contemplated "sand" in the earthly soil of a real forest, and not "sea sand." I need not,

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pursue this subject, as I think the conviction cannot be supported for other reasons.

The Police Magistrate thought that the place from which the sea sand was taken was not part of the shore, but was part of the waste land adjoining it, and was therefore land at the disposal of the Crown, and therefore was "forest." In taking this view the Police Magistrate forgot the charge which he himself formulated, for the charge was that the accused removed the sand from the seabeach. But it is worth while for a moment to consider his reasoning. It appears that there is a gravelled path or road along the shore, and the sand was removed from the land side of this path. According to the Police Magistrate, the path was intended to mark the limit of the seashore. The Government may, like King Canute, set a mark on the shore and tell the waves: "Thus far and no further." But the waves have a habit of disregarding all human barriers, and they, in this as in the old case, dash over the path and deposit mounds of sand on the other side. It is these mounds that the accused cut away and removed. In one point of view the accused rendered some service in removing these useless mounds and depositing the sand in his own good land and increasing its fertility. The fact is that the legal way of determining the seashore is well known, and the circumstances disclosed appear to me to show that the place in question is part of the seashore. But, as I said, the charge says that the accused removed the sand from the seabeach, and that concludes the matter.

The Local Board appear on a narrow reading of the Ordinance to have thought that they had no power over this part of the seashore, and instead of enforcing their own rules, they deputed one of their members to negotiate a peace with the accused. One does not usually associate this kind of temerity with Chilaw. But this meticulous proceeding, as might be expected, failed to produce peace, for the accused became obstinate, and refused to agree to any terms. The inexplicable hesitation of the Local Board appears to me to be due to a mere bugbear. Section 4 of the Local Boards Ordinance, No. 13 of 1898, empowers the Governor to bring any town under the operation of the Ordinance and to define the limits of such town. The prosecutor in this case himself says that the sand was removed from land within the Local Board limits. Again, he says: "I have nothing to do with land vested in the Board. This land is not vested in the Board, although the land has been brought in lately within the Local Board limits." The Secretary of the Local Board also says that "the spot from which the sand was removed was brought within the Local Board limits in 1918. No vesting has yet been made in the Board." This is a good illustration of the danger of allowing technical terms to be used by persons who do not understand them. The expression "vesting order" has reference to the provision of section 52 of the Local

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Boards Ordinance, which declares that "all waste ground or land within the town . . . . . which have been or may be handed over to the Board with the sanction of the Governor (and of which handing over a record in writing shall be made signed by the persons authorized to hand the same over and by the Chairman of the said Board), shall be and the same are hereby vested in the said Board." What the Secretary evidently meant was that, although the land was handed over, no written record, which he calls "vesting order," has yet been made of the fact. No such record or "vesting order" is necessary to vest in the Board any land which is handed over; the Ordinance itself declares such land to be vested in the Board. The written record is only evidence of the handing over as between the Crown and the Board, and as I ventured to explain in *Andrias Appu v. Navaratnarajah*,[1] the provision within the brackets in the above section is only directory. The Police Magistrate, in the same way as the Secretary of the Board, thought that the land was not "formally vested" in the Board, and that, therefore, the Board could not deal with the matter. The relevancy of this point is that the land being vested in the Local Board, it ceased to be a "forest," if it was one before, and the sand is not "forest produce," and the removal of it is not a forest offence.

The conviction is set aside.

Set aside.