

BYRDE v. APPUHAMI.

P. C., Ratnapura, 22,835.

1902.

April 24.

Removal of timber without permit—Rule 2 (a) framed under s. 44 of Ordinance No. 10 of 1885, as amended by Ordinance No. 1 of 1892, s. 14—Removal "from any land"—"Land" includes house.

Per MONCREIFF, A.C.J.—The term "any land." used in rule 2 (a), framed under section 44 of the Ordinance No. 1 of 1885, as amended by Ordinance No. 1 of 1892, section 14, includes not only the land on which the trees were felled, but every land to which they had been carried and any house in which it was stacked.

Spence v. Anthony, 1 S. C. R. 55, disapproved.

THE accused in this case were charged with having on the 25th and 28th January, 1902, at Mahadeniyahandiya in Napawala, in Kuruwiti korale, a district proclaimed under the provisions of the Forest Ordinance, No. 10 of 1885, moved certain timber from the land Mahadeniyahandiya without a permit from the Government Agent of Sabaragamuwa, or some other officer duly authorized by the Government Agent to issue permits; and that thereby they had committed a breach of rule 2 (a) framed under section 44 of the Ordinance No. 10 of 1885, as amended by section 14 of Ordinance No. 1 of 1892, and published in *Government Gazette* No. 5,689 of the 4th May, 1900, and so committed an offence punishable under section 45 of the Forest Ordinance, No. 10 of 1885.

The rule ran as follows:—

"No forest produce or timber shall be moved in any district which has been proclaimed by the Governor from any land, except with a permit from the Government Agent," &c.

It was proved that the first accused employed men to fell timber that was lying on Crown land on Napawala dowa (field); that on the 10th November, 1901, the Assistant Conservator seized some timber at Mahadeniyahandiya on the land belonging to one Podisingho as being timber brought from the dowa; that the accused removed it from Podisingho's house to the first accused's house; and that there was no permit shown for such removal.

The first accused stated that he felled the timber on certain lands, and having obtained a permit from the Ratemahatmaya of Kuruwiti korale he removed it to Podisingho's house, and from that place to his own house in the same village.

The permit was found to be a time-expired one. The Police Magistrate found the accused guilty, and sentenced each of them to a fine of Rs. 100.

They appealed.

Walter Pereira, for appellants.—No permit was necessary in this case, as the removal proved by eye witnesses was that from

1902. Podisingho's house to the first accused's house. Rule 2 requires
 April 24. a permit only when the removal is "from any land." In *Spence v. Anthony* (1 S. C. R. 55), Lawrie, J., held that "land" meant land in which the trees grew and were felled, and not a shed, house, workshop, or ship.

Rámanáthan, S.-G., for respondent, was not called upon.

24th April, 1902. MONCREIFF, C.J.—

The appellants were charged with having removed timber without a permit from a land called Mahadeniyahandiya, within a proclaimed district, in breach of rule 2 of the regulations published in the *Government Gazette* of 4th May, 1900.

As a matter of fact, the appellants had removed this timber from the land on which it was felled and placed it in the house of one Podisingho. For that they had a permit. Afterwards, when the period for which the permit was given had run out, they again removed the timber from Podisingho's house to the house of the first accused. For that removal they had no permit.

On behalf of the appellants, Mr. Walter Pereira urged that no permit was required in that instance, and he cited a case (*Spence v. Anthony*) reported in 1 S. C. R. 55, in which Mr. Justice Lawrie stated his opinion to be that the land from which timber is removed, and for the removal of which timber a permit is required, is not only "a land" but the land on which the trees grew and were felled. The expression used in the regulation is "any land." I am disposed to take a different view of these words, because if no permit is required for removal of timber from a house, it might well be that the timber might be placed in a house in a spot close to which it fell, and thereupon no permit would be required. In the next place, it is conceivable that timber felled upon one land might be stacked on another which adjoins it, and again no permit would be required. The impression I gather from the words as they stand, unexplained by other provisions so far as I am aware, is that "any land" would include not only the land on which the trees were felled, but any land to which they had been carried, and that whether the timber was placed in a house or stacked in the open air.

I therefore think that this removal was made without a permit, which is required by the regulations, and that the Magistrate was right in finding the charge proved.

The penalty he has inflicted seems to me to be excessive. I would reduce it in each case by one-half; that is to say, each accused to pay a fine of Rs. 50.