

1922.

Present: De Sampayo J.

FERNANDO *v.* SAMARAWICKREMA.

285—C. R. Dandagamuwa, 4,683.

Trees cut from road reservation—Sale by Public Works Department—Is permit of Forest Officer necessary for removal? Action against Forest Officer for damages for seizure and detention—Forest Ordinance, 1907, s. 24.

Some trees standing on a road reservation were cut by the District Engineer and sold to the plaintiff; who removed the same without the permission of the Forest Officer, though with the implied permission of the District Engineer and in good faith. The Forest Officer seized and detained the timber and cart and bulls. Plaintiff brought an action for damages.

Held, that the removal without a permit of the Forest Officer was illegal, and that no action for damages lay against him.

THE facts appear from the judgment.

H. V. Perera, for plaintiff, appellant.

Muthunayagam, for defendant, respondent.

February 7; 1922. DE SAMPAYO J.—

This is a claim for damages for unlawful seizure and detention of a quantity of firewood belonging to the plaintiff, together with the cart in which the firewood was being carried. The District Engineer of Dandagamuwa cut down a number of shade trees standing on the road reservation for the purpose of widening the road, and sold the timber to the plaintiff, who bought the same for use at a brick kiln which he was working. The plaintiff removed two or three cart loads of the timber, and when another cart load was being removed, the defendant, who is Forest Ranger, seized and detained the timber and the cart and bulls, on the ground that he had obtained no permit. The District Engineer who sold the timber impliedly permitted the plaintiff to remove it, and there is no doubt that the plaintiff acted in good faith, and suffered damage by the seizure and detention of the timber and the cart. The question, however, is whether the plaintiff

did not require a permit under the provisions of the Forest Ordinance for the removal of the timber. The District Engineer purported to act in pursuance of the General Order No. 1,136 which is as follows:—

1922.
DE SAMPAYO
J.

*Fernando
v. Samara-
wickrema*

“ Road reservations, 1 chain in width, from the centre of all public roads, being required for the protection and future widening of such road, shall be in charge of public authorities under the Road Ordinance or the Public Works Department, as the case may be, and the removal or disposal of all timber and forest produce therefrom shall be arranged solely by that authority. ”

A circular dated April 14, 1916, issued by the Director of Public Works with regard to removal of timber from road reservations is supposed to be in conflict with the above general order of Government. But when the two orders are closely examined, no real conflict will be found to exist. The relevant portion of the circular is to this effect:—“ If it is desired to cut timber and remove it for use elsewhere, the Provincial Engineer, having first obtained the authority of this office, should issue the necessary permit. Before the timber is actually removed, however, the local officer of the Forest Department should be requested to stamp it and to endorse the permit. ” This provides a special and perhaps an unnecessarily cumbersome procedure, but it conserves the power of the Forest Department with regard to permits for the removal of timber. The question really turns upon the effect to be given to a rule made by the Governor in Council under section 24 (1) of the Forest Ordinance, No. 16 of 1907. That section empowered the Governor to make regulations, *inter aliâ*, for prohibiting the removal of timber without a pass from an officer duly authorized to issue the same, and chapter V., rule 2, of the rules made by the Governor provides that “ no forest produce or timber shall be removed, except with a permit from the Forest Officer. ” It may be noted in this connection that sub-section 2 of the above section of the Ordinance declares that in that section the terms “ forest produce ” and “ timber ” shall, unless the context otherwise requires, include timber cut in any land, whether the property of the Crown or any private individual. I think that the plaintiff, though unintentionally and innocently, contravened the above rule in removing the timber in question without a permit from the Forest Officer. There was a suggestion that the defendant, the Forest Ranger, who knew of the sale by the District Engineer and was shown the receipt, was actuated by personal feeling on account of a previous unpleasantness between him and the plaintiff. This may not have been the case. In the circumstances, however, I think his act was very officious, but as it was lawful the plaintiff has no legal claim for damages. The judgment dismissing the action is therefore right.

The appeal is dismissed, with costs.

Appeal dismissed.