

1913'

Present : Pereira J.

FOWKES v. DEENE

829—P. C. Nuwara Eliya, 7,590.

*Game Protection Ordinance, 1909—Exclusive right of fishing in a stream granted to a club—Rule by club delegating to a public officer the right vested in the club of granting licenses.*

The word "sub-section" in the expression "last preceding sub-section" in section 17 of "The Game Protection Ordinance, 1909," cannot be regarded as a mistake for the word "section."

It is not competent to a club, to which the exclusive right of taking from a stream the fish mentioned in Schedule III. of the Ordinance has been conceded, to make a rule delegating to any particular public officer the right vested in the club of granting licences enabling the licensee to fish for fish to which the concession applies.

**T**HE facts are set out in the judgment.

*Bawa, K.C.*, for the accused, appellant.

*Hayley*, for the complainant, respondent.

*Cur. adv. vult.*

December 1, 1913. PEREIRA J.—

This is a prosecution under "The Game Protection Ordinance, 1909." According to the formal conviction entered up, the accused has been convicted of fishing for trout in Blackpool river, "a stream scheduled as a preserved water of the Ceylon Fishing Club under sections 16 (1), (2), (3), 17, and 18 of Ordinance No. 1 of 1909, without having obtained a license from the Assistant Government Agent of Nuwara Eliya, and thereby committing an offence punishable under section 19 (2) of the same Ordinance." I suppose what is meant by the words "a stream scheduled as a preserved water of the Ceylon Fishing Club" is a stream in which the right of taking the fish mentioned in Schedule III. of the Ordinance has been conceded to the Ceylon Fishing Club by the Governor in Executive Council by writing under the hand of the Colonial Secretary. If so, I have to observe that there is no evidence that Blackpool river is such a stream. A booklet purporting to contain the "Rules of the Ceylon Fishing Club" has been stitched up with the record, which contains a list of streams and waters "in which the exclusive right to take trout is conceded to the club"; but, in the first place, this booklet is not evidence, and, in the next place, there is no mention, in the

list, of Blackpool river, except as follows: " No. 7—Streams on Elk Plains between Blackpool and Ambewela. " If it was intended to exclude Blackpool river from the list, it could not be done more effectually than by the words used. When we speak of things lying between two other things, we naturally exclude from the category the things last mentioned. Assuming, however, that it has been proved that Blackpool river is such a stream as is mentioned above, the evidence manifestly discloses no offence under section 19 (2) of the Ordinance. The respondent's counsel, however, has submitted that section 19 (2) is a mistake for section 19 (1). How is the offence described in the conviction punishable under section 19 (1)? Section 17 of the Ordinance provides [omitting immaterial words] that any person who fishes for fish, for the taking of which a license is required by rules under the " last preceding sub-section, " without such license, shall be guilty of an offence, and shall be liable on conviction to the punishment prescribed by section 19 (1). The respondent's counsel submitted that the word " sub-section " in this section is a mistake in the Ordinance for " section. " I am afraid I shall not be justified in proceeding on such an assumption. Section 17 as it stands constitutes a rational provision. That being so, it will, I think, be contrary to all canons of construction to assume that the use of any particular word in it is a mistake, and to substitute another word for it. Such a mistake, if it exists, can only be corrected by the Legislature. What is referred to in section 17 as the " last preceding sub-section " is, of course, sub-section (3) of section 16, that sub-section provides for the issue of licenses by the club, to which a concession has been granted as stated above, enabling the licensee to fish for fish to which the concession applies. The only rule that was pointed out to me as a rule made in terms of this provision is rule No. 3. That rule provides for the issue of licenses (to fish for trout) not by the club, but by the Assistant Government Agent. It purports to delegate to the Assistant Government Agent the power vested in the club by the Ordinance. That, of course, the club could not do. It was argued by the respondent's counsel that the meaning of the rule was that the Assistant Government Agent was to act on behalf of the club. The words used do not at all admit of such a construction. They imply nothing other than an attempt at delegation of the power mentioned above. Had the rule been that a license approved by the club in general or special meeting or by a committee may be issued in the name of the club under the hands of the Government Agent the requirements of the law would have been complied with, but in the present state of things, there being no rule providing for the issue of licenses by the club itself, section 17 has no application, and the conviction cannot stand. I set it aside and acquit the accused.

*Set aside.*