

NETTLE-
TON,
C.J.
&
GRIM-
SHAW,
P.J.
1925
} May 1
—

[NETTLETON, C.J. AND GRIMSHAW, P.J.]

FOREST DEPARTMENT

v.

MICHAEL PAPA NICOLA AND ANOTHER.

FOREST PRODUCE—SHINIA—EVERYBODY'S RIGHT—LAW 22 OF 1879—CRIMINAL
PROCEDURE LAW, 1919.

The accused were found in possession of three donkey-loads of freshly cut shinia. They claimed they had a right to cut shinia for personal use. The Forest Department submitted that only persons who lived adjoining the forest could cut shinia. The Magistrate before whom the case was brought stated a case for the Supreme Court.

For Forest Department the *King's Advocate*.

For accused *Paschalis*.

Judgment : In this case a question of law has been reserved for the decision of this Court by the Magisterial Court of Lefkoniko. The facts of the case are not in dispute. The two defendants had cut shinia from the neighbouring State forests and they are charged with having in their possession three loads of this forest produce without a permit. They are charged under sections 4 and 5 of the Law 12 of 1889.

The effect of these sections is that any person in possession of timber of forest produce is to be deemed unlawfully in possession thereof and guilty of an offence unless he can discharge the burden of proving that he obtained possession lawfully.

To establish their lawful possession the defendants in this case rely on section 7 of Law 22 of 1879, which runs as follows:—

“ Nothing in section 6 shall prohibit the collection and removal of
“ dead and dry wood, stools, roots and trunks of dead trees or brushwood
“ to be used solely for firewood, for use of the inhabitants of villages
“ who have been accustomed to supply their wants in this respect from
“ the forests in the vicinity of their village, or shall prohibit the gathering
“ of shinia for personal use, or the cutting of myrtle for the purpose
“ of constructing well ropes.”

The defendants maintained that the words of this section enable any person to go to State forests, *i.e.*, such as have been declared to be under the protection, control and management of Government under section 4 of Law 22 of 1879, and gather shinia therein for their personal use.

For the prosecution it was contended that the right to gather shinia for personal use in State forests granted by this section is limited to the inhabitants of villages in the neighbourhood of such State forests.

The question is submitted to this Court in the following terms:—

“ Is the collection of shinia for personal use a right of people only, “ who are forest neighbours, or is it everybody’s right ? ”

Our task, therefore, is, in substance, to construe the words of section 7 of Law 22 of 1879. In the first place, it is to be observed, this law was enacted shortly after the British Government assumed the administration of this Island, and it was the first legislative attempt to prevent the destruction of forests. Being a penal law it must be strictly construed. The general effect of section 6 of the law is that no individual can take anything out or make any use of these State forests unless he has received express permission so to do from the Government.

This effect is modified by section 7 which establishes three exemptions. Nothing in section 6 is to prohibit, with certain provisos, to which I will shortly refer, three kinds of acts: firstly the collection and removal of dead wood and brushwood; secondly the gathering of shinia, and thirdly *the cutting of myrtle.*

It must be noted that nothing is said as to what persons are not to be prohibited from doing these three kinds of acts. The acts are to be left entirely outside the prohibitions of section 6, if the provisos are fulfilled; section 6 is not to interfere with the collection and removal, or the gathering, or the cutting whoever the persons performing these acts may be.

Now what are these provisos ? They all refer to the use to which the produce is to be applied after it has been obtained from the forest by these acts which are not prohibited. First the collection and removal of dead wood and brushwood to be used solely for firewood must be for use of the inhabitants of villages who have been accustomed to supply their wants in this respect from the forest in the vicinity of their village. *It must be shown that this is the purpose of the collection and removal.* But if dead wood and brushwood is collected and removed for the use solely as firewood of these particular inhabitants nobody is prevented from so collecting and removing.

Now as to the second act, with which this case is directly concerned. Immediately after the passage in section 6 dealing with what I have called the first act, we have the words “ or shall prohibit the gathering “ of shinia for personal use.” The “ or ” with the words “ shall prohibit ” repeated after it must be regarded as completely disjunctive. The proviso is that the shinia must be gathered for personal use only. This means that the person who gathers it must use it himself. He may

NETTLE-
TON,
C.J.
&
GRIM-
SHAW,
P.J.
FOREST
DEPART-
MENT
v.
MICHAEL
PAPA
NICOLA
& ANOTHER

NETTLE-
TON,
C.J.
&
GRIM-
SHAW,
P.J.
—
FOREST
DEPART-
MENT
v.
MICHAEL
PAPA
NICOLA
& ANOTHER
—

not give it away or sell it. But we can see nothing in the words dealing with this second act which limit the exemption from the provisions of section 6 to the neighbours of the forest.

The cutting of myrtle is treated in the same way. Section 7 allows anybody to cut it, provided it is cut for the purpose of constructing well ropes.

Reading the section as it stands, the interpretation we have put upon it seems to be the only one it can reasonably bear. But for the Crown it has been contended (1) that this cannot have been the intention of the legislature; (2) that if this were the law every person in the island would be at liberty to go to a State forest and gather shinia for his personal use; and (3) that other sections of the law show that it is necessary to limit the exemption of section 7 as to shinia to forest neighbours.

As to the first point it may well have been the intention of the legislative authority when it passed this Law or Ordinance, as it was then called, in 1879, not to interfere with the gathering of shinia by anybody provided he used it himself and did not give it away or sell it.

The British Government had, as already stated, but recently assumed the responsibility of making provision for the welfare of this island, and obviously they might not have wished to alter more than was absolutely necessary the ordinary usages of the people. Probably the Government was well content, if it could check the destruction of timber, which was going on in the forests of the island, to allow the gathering of a small shrub like shinia, for purely personal use, to continue. It may be observed at this point that excellent charcoal is said to be made from its roots. It can also be used as fuel, and an oil or essence is said to be extracted from it. So much for the intention of the legislature in 1879, with which, however, this Court is concerned only in so far as it can be ascertained from the words of the enactment.

As to the second point, obviously this Court can only give effect to law: unless the law forbids the gathering of shinia in State forests, this Court cannot forbid it, however desirable it may be in the public interest. But the sections referred to by the King's Advocate in connection with the third point call for careful examination. First let us consider what his interpretation of section 7 entails. He invites us to read it as "Nothing shall prohibit the gathering of shinia for personal use by the inhabitants of certain neighbouring villages." Obviously he cannot ask us to insert or read in the words "for the use of these inhabitants," for the words in that case must have been "for their personal use." No, he asks us to infer a gathering "by the

inhabitants." But this "by inhabitants" cannot be inferred from the part of the section relating to collection and removal, for, in that part, there is no mention of the persons by whom this act is to be performed; it is merely a question, as already indicated, of the use to which the produce is to be applied. We consider that in the section itself there is nothing to lead us to infer these words, let alone necessarily infer them, as we must before we can treat such an inference as law. We can find nothing in sections 5 and 8 of the law which induces us to alter our opinion.

Section 5 prevents the accrual of rights over the forests except by a Government grant or contract. These general words cannot limit the expressed detailed exemptions as to brushwood, shinia and myrtle contained in section 7. Moreover these exemptions were not treated as rights which could be the subject matter of a grant or contract. We have no doubt that section 5 does not contemplate the gathering of shinia for personal use as a right.

This view prevents us from finding any support for the limited interpretation of section 8 for which the Crown contends. By that section persons having any right or privilege in a forest and the inhabitants of neighbouring villages have the burden cast upon them of being bound to assist in extinguishing forest fires. For the Crown it was submitted that if anybody could collect shinia for his personal use anybody could be called upon to come out from, say, Nicosia and assist in extinguishing a fire. I think that the difficulty of the construction of section 8 can easily be avoided if one refuses to treat the gathering of shinia as a right or privilege contemplated by section 8. We are clearly of opinion that section 7 of Law 22 of 1879 excepts from the provisions of section 6 of that law the gathering of shinia for personal use. But a further question is asked, whether everybody is at liberty to gather shinia for personal use. We have not had our attention drawn to any other section, nor can we find any which prohibits this from being done, and after considering the intention of the legislature as disclosed by the words of section 7, and the other sections under reference, and the law as a whole, we must answer the question submitted to this Court by holding that under the law as it stands at present it is in the words of the question everybody's right to gather shinia for personal use from State forests.

It is with regret that we have found ourselves compelled to come to this decision. It would clearly be against the interest of this island if the general public, particularly in these days of increased population and improved communications and rapid transit, made it a practice to go to

NETTLE-
TON,
C.J.
&
GRIM-
SHAW,
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—
FOREST
DEPART-
MENT
v.
MICHAEL
PAPA
NICOLA
& ANOTHER
—

NETTLE-
TON,
C.J.
&
GRIM-
SHAW,
P.J.
}
FOREST
DEPART-
MENT
v.
MICHAEL
PAPA
NICOLA
& ANOTHER

the State forests and dig up (for I interpret "the gathering of shinia," as pulling it up by the roots) shinia even for their personal use. Clearly a close-growing shrub of this kind is of real value in holding moisture and in preventing the washing away of soil by rain. An amendment of the law appears desirable. But that is not the province of this Court. It has to interpret the law as it stands. Section 7 is unfortunately worded. Exceptions from the provisions of a law should not be based upon possible intentions in the minds of people which must be difficult to establish or disprove.

NETTLE-
TON,
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DICKIN-
SON,
ACTING P.J.
1925
}
May 4

[NETTLETON, C.J. AND DICKINSON, ACTING P.J.]

IN THE MATTER OF THE BANKRUPTCY OF THE FIRM N. CH.
TAVERNARIS & BROS. CONSISTING OF AVRAAM TAVERNARIS
AND MARIA A. FINIEFS,

AND

IN THE MATTER OF THE BANKRUPTCY OF AVRAAM TAVERNARIS
AND MARIA TAVERNARIS PERSONALLY, JOINTLY, AND SEVERALLY.

INTERPRETATION OF ORDER OF THE SUPREME COURT—"APPEAL ALLOWED"—
A FORMAL ORDER IN "COMMON FORM" LIMITED BY ACTUAL ORDER MADE BY COURT.

The facts are disclosed in the decision of the Court.

For Applicant (Maria A. Finiefs) *N. Paschalis*.

Syndics and Juge Commissaire in person.

Paschalis: As the appeal was allowed (*vide* Supreme Court formal judgment) a new adjudication in Bankruptcy must be made against my client.

Judgment: The Court below, on the 18th July, 1924, declared appellant to be a partner in a certain firm, that that firm was bankrupt, and that she was jointly and severally and personally bankrupt with her partner Avraam Tavernaris, *i.e.*, for the partnership debts.