

DANIEL v. RODRIGO.

1896.

January 31.

P. C., Pánaduré, 13,728.

*Toll—Ordinance No. 14 of 1867, ss. 7, 15—Superintendent of Minor Roads
—Certificate of exemption.*

Under section 7 of the Ordinance No. 14 of 1867 the Government Agent has no power to issue a certificate of exemption from toll of the carriages, carts, and horses of the Superintendent of the Minor Roads while used in the Public Service on the roads in charge of that officer.

THE accused was convicted under the 15th section of the Ordinance No. 14 of 1867 of taking toll from H. L. Daniel, Superintendent of Minor Roads for the Western Province, a person whom the accused had been directed by the Government Agent of the Western Province to permit to pass without payment of toll.

The certificate of exemption ran as follows:—“This is to certify that the carriages, carts, and horses of the Superintendent of Minor Roads are entitled to pass free of payment through all tolls situated within ten miles of any roads in his charge, when those carriages, carts, or horses are travelling upon the Public Service. Granted under Ordinance No. 14 of 1867.

“ A. R. DAWSON,
“ Government Agent.”

De Saram, for accused appellant.

31st January, 1896. WITHERS, J.—

The defendant has been convicted under the 15th section of the Ordinance of 1867 of the offence of demanding and taking toll as toll-keeper from Mr. Daniel, the Superintendent of Minor Roads, an officer exempted by the 7th section of Ordinance No. 14 of 1867 from paying toll.

The facts and the law scarcely support this judgment.

The evidence discloses that toll was taken, not from Mr. Daniel, but from his horsekeepers, who were taking a carriage and two horses of their master back to Colombo.

Mr. Daniel was at Pánaduré when toll was demanded of his servants. One of them returned and told Mr. Daniel of the detention, and he gave his horsekeeper a rupee to pay the toll demanded. The horsekeeper was given by his master exhibit C, which purports to be a certificate of exemption from toll of the carriages, carts, and horses of the Superintendent of Minor Roads

1896. while used on the Public Service on the roads in that office,⁵
January 31. charge. It is signed by Mr. Dawson as Government Agent and
WITHERS, J. Chairman of the Provincial Road Committee.

This certificate names no one, and is, I suppose, intended for the use of the officer for the time being.

This Court has held that a Superintendent of Minor Roads is not liable to pay toll when engaged on any work on a road within ten miles of the toll station. He derives his immunity in such circumstances from the Ordinance itself.

No one appeared in support of the conviction to establish the power of the Government Agent to grant such a certificate as "C." His power is, as far as I know, limited by the provisions of section 7 of the Toll Ordinance of 1867, which enacts:—"..... and it shall be lawful for the Government Agent, if he shall see fit ^{to} do, to direct the toll-keeper in writing to permit cattle or sheep driven to grass, persons with cattle, agricultural instruments, or seed grain for the cultivation of their lands, and children going to and from school, to pass without payment of toll" This certificate goes beyond these powers. What I take it Mr. Daniel should have done was to give his horsekeepers a certificate that they were taking his carriage and horses back to Colombo on a return from a tour of inspection of the roads under his supervision, or on return from supervising some particular work within ten miles of the station, as the case may be.

I think the accused was ill-advised in taking the toll under the circumstances, but he was not, as it seems to me, breaking the law, and so this judgment must be set aside, and he must be acquitted and discharged.
