

1895.

June 17.

RODGERS v. TINDALS.

Master attendant and tindals of boats—Departmental inquiry—Ordinance No. 6 of 1865, ss. 23 and 40—Prosecution of offences against Ordinance.

A master attendant acting under section 23 of Ordinance No. 6 of 1865 can only withdraw or suspend a license, but he is not empowered by the Ordinance to take evidence on oath in any departmental inquiry, or to impose a fine as the result of such inquiry.

All offences against the Ordinance being made cognizable by the Police Courts by section 40, they should be dealt with in a regular criminal proceeding before such courts.

THIS was an inquiry which the Acting Master Attendant professed to hold departmentally under section 23 of Ordinance No. 6 of 1865. It was due to a report made to him by the Harbour Police that the tindals of certain cargo lighters had gone alongside the ss. *Rohilla* before she was moored in her berth. On the day fixed for the inquiry the tindals were present, the report of the police was read to them, and they having denied the charge the Acting Master Attendant examined on oath some witnesses in support of the charge and made the following order:—"I find " all the accused guilty of going alongside the ss. *Rohilla* before " she was moored and impeding the pilot's movements in mooring " the vessel. For this misconduct the accused are fined Rs. 5 " each, or in default their licenses to be suspended for seven days.— " F. O. Carter, Master Attendant."

The tindals appealed on the footing that the order complained of was made by Mr. Carter in his capacity of Joint Police Magistrate of Colombo.

Dornhorst and Bawa, for appellants.

17th June, 1895. BROWNE, A.J.—

I think that the judgment of the Joint Police Court of Colombo, dated the 4th May, 1895, should be set aside, and the proceedings quashed as irregular.

In forwarding the appeal lodged in these proceedings the Acting Master Attendant has indicated to this Court his own doubts whether these, what he has styled "departmental" proceedings, and professed to hold under section 25 of Ordinance No. 6 of 1865, are regular. It is very clear they are not. 1895.
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[After setting forth the facts of the case he continued] I do not see that Ordinance No. 6 of 1865 empowered the Master Attendant to take evidence on oath or to impose a fine. Section 23 empowers him only to withdraw or suspend a license, but his order to any such effect requires confirmation by His Excellency the Governor.

It was stated in argument that the misconduct of which complaint was made would constitute an offence under Port Rule No. 37 of 20th December, 1894. If it be so, prosecution to conviction and fine is authorized by section 34, and the provisions of section 40 would apply.

The Ordinance has clearly indicated that it is in such a regular criminal proceeding an offender should be charged, tried, and punished, and that by a Police Magistrate. These proceedings are an irregular attempt to arrive at this end under the guise of a departmental inquiry on oath by the Master Attendant, whereby possibly he might question the right of any person to appeal from his decision. In truth, however, it was a prosecution before the Joint Police Court, and in it the accused has not been charged with any statutable offence, nor regularly tried nor convicted. I hold the accused had right to bring the decision before this Court by appeal as he has done, and I order for these reasons that the proceedings be quashed.
