

KUMARAPPA v. HARTLEY.

P. C., Galle, 20,327.

1896.

July 6 and 7.

Forcibly passing a toll station—Resistance to toll-keeper—Ordinance No. 14 of 1867, s. 17.

A forcible passage through a place appointed for the collection of tolls made punishable under section 17 of Ordinance No. 14 of 1867 is the taking of a vehicle through such place notwithstanding the opposition thereto or the forbidding thereof by the toll-keeper. It is not enough that the toll-keeper should demand his toll: he must forbid the passage of the vehicle until toll is paid. If his insistence is met by resistance, then the taking of the vehicle through without payment is a forcible act.

THIS was a prosecution under the Toll Ordinance. The facts of the case appear in the judgment appearing below.

Bawa, for appellant.

Cur. adv. vult.

7th July, 1896. WITHERS, J.—

The fine imposed for the offence of forcibly taking a vehicle through a place duly appointed for the collection of tolls being limited to Rs. 10, I asked appellant's counsel what was the point of law on which this appeal was taken, and after hearing Mr. Bawa I decided that I could only hear him on this point, "Do the facts found by the Magistrate justify the verdict that the appellant forcibly took his vehicle through a place duly appointed for the collection of tolls?" Now, to begin with, the Magistrate does not expressly find as a fact that the place through which the appellant drove was a place duly appointed for the collection of tolls. "So far as I can judge," says the Magistrate in his judgment, "the toll station stood in the proper place." No forcible driving through a place not duly appointed for the collection of tolls can be an offence under section 17 of the Ordinance 14 of 1867, and it is of this offence the appellant has been convicted.

1896.
July 6 and 7.
WITNESSES, J.

The place fixed by law (see article 16 of the sale of the right to collect the toll of Labuduwa-Akminana road was on the land called Wellagahawatta at Totagoda between the 4th and 5th mile posts. The toll of this section of the road was after the sale improperly collected at a place called Badalwatta. Just before the date of the alleged offence the toll-house was shifted to the place where defendant drove his vehicle. According to the Superintendent of Minor Roads, Mr. Erskine, who had the toll-house put up there, the place was "on the edge of Wellagewatta." But was it within or without Wellagewatta at Totagoda between the 4th and 5th miles ?

There is really not sufficient proof that the toll-house was put up in the duly appointed place. This defect appears to me to be fatal to the conviction.

If I was otherwise with the Magistrate in his judgment, I should send the case for further evidence on this point. For the rest, the material part of the Magistrate's judgment is as follows :—"The second accused drove up to the toll station. The toll-keeper seeing him coming took down his badge and stood apparently in readiness to receive toll ; second accused stopped his carriage, and should then have paid the toll. Instead of doing so, he told the toll-keeper sharply in English to pull down the toll station at once. Although, so far as I can judge, it stood in the proper place, the toll-keeper, according to second accused's own evidence, appeared to be much frightened, and put back his badge ; second accused thereupon drove on without paying toll, because he says it was not demanded. It is not clear what form of demand he expected. In my opinion the appearance of the toll-keeper at the bar, badge in hand, is sufficient demand for all practical purposes. To much frighten him by a sharply-worded, unreasonable order, in a language he probably does not understand, to take away his toll shed and bar at once, and then drive on without paying toll, is in my opinion the forcible taking of a vehicle through the toll within the meaning of the Ordinance."

It must not be forgotten that on the day in question the appellant was surprised to find the toll shed in its new place. He had not been paying toll on this road for some months, because the station had been at an unauthorized place. The cadjan building had been run up against the boundary wall of the Mission station, and this moved the appellant to order the toll-keeper to put the shed somewhere else. It may or may not have been an unreasonable order, but I have no doubt it was honestly given, because the appellant honestly thought that the toll-keeper had no right to pitch his shed against the Mission wall, and the sharp order

was not given to *avoid* against demand of toll, but to protest against the station being put where it was.

1886.
July 6 and 7.

It has been laid down by the Judges of this Court that a forcible passage under this section is to take a vehicle through a place for collection of tolls, notwithstanding the opposition thereto or the forbidding thereof by the toll-keeper (see *Viramuttu v. Sedayo*, 1 S. C. C. 57 and 9 S. C. C. 95).

WITHERS, J.

It is not enough that the toll-keeper should demand his toll ; he must forbid the passage of the vehicle until toll is paid. If his insistence is met by resistance, then the taking of the vehicle through without payment is a forcible act. But here the toll-keeper did nothing of the sort. Hence I think the Magistrate drew an inference of guilt, which the facts proved before him do not justify. I therefore reverse his decision. The appellant must be acquitted, and the fine, if paid, restored.

