

1906.
July 13.

Present: Mr. Justice Wood Renton.

KNATCHBULL v. FERNANDO.

P. C., Colombo, 99,325.

Toll—Passing toll bar—Officer in uniform but not on duty—Liability to pay toll—Detention without attempting to ascertain identity—Wrongful restraint—Ceylon Penal Code, section 332.

The complainant, a military officer, charged the accused, a toll-keeper, with wrongful restraint under section 332 of the Penal Code. It appeared that the complainant, who was in uniform, but not on duty, on the occasion in question, rode his bicycle through the toll bar but did not pass the bridge, and on being asked by the accused to pay the toll refused to do so on the ground that he was in uniform. The accused did not ask the complainant for his name and address, but detained him till a constable arrived, who took the complainant's name and address and let him go.

Held, that the complainant was liable to pay toll, as he was not on duty, although in uniform.

Held, also that the complainant was liable to pay toll, although he did not pass the bridge.

Judgment of BONSER C.J. in *Punchi Sinno v. Perera* (3 N. L. R. 188) questioned.

WOOD RENTON J.—When a passenger once passes the toll bar he passes the statutory rubicon, and must pay toll, whether he chooses to pass the bridge or not.

Held, further, that the accused was guilty of wrongful restraint, as he was not justified in detaining the complainant without attempting to ascertain the complainant's identity.

A PPEAL from a conviction under section 332 of the Penal Code.

The facts and arguments sufficiently appear in the judgment.

H. J. C. Pereira, for the accused, appellant.

13th July, 1906. WOOD RENTON J.—

This case raises some interesting questions as to the rights and duties of toll-keepers. On the 20th of June last the complainant, Captain Knatchbull, rode his bicycle through the Bambalapitiya toll bar on his way to Colombo from Mount Lavinia. He was in uniform at the time, but he was not on duty. The accused appellant Fernando is the toll-keeper of Bambalapitiya, and on the occasion in question he stopped Captain Knatchbull and called upon him to pay the toll before he passed the bridge. In point of fact Captain

Knatchbull did not at any time pass the bridge. On the appellant's demand for toll he replied that he was in uniform, and that therefore he was not liable to pay anything. The appellant refused to accept this plea, and he detained Captain Knatchbull for about forty minutes till he succeeded in getting a constable brought to the scene. The constable took the complainant's name and address and then let him go. Prior to the arrival of the constable Captain Knatchbull had offered to repass the toll bar and go back, but the appellant declined to allow him to do so. I should add that the appellant did not ask Captain Knatchbull for his name and address, and that Captain Knatchbull did not tender either of these until the constable came on the scene. The complainant in consequence of these proceedings in the first place prosecuted the appellant under section 19 of "The Tolls Ordinance, 1896," for having demanded a toll illegally, inasmuch as he was, at the time of the demand, in his uniform. At the hearing of the charge, however, it was pointed out by the learned Police Magistrate that it is only when an officer is on duty as well as in uniform that he is entitled to the benefit of the statutory exemption. It was admitted by Captain Knatchbull that he was not on duty at the time when he passed through the Bambalapitiya toll bar, and the charge was therefore properly dismissed.

In the next place, the complainant charged the appellant under section 332 of the Penal Code with the offence of wrongful restraint, and on this charge the appellant has been convicted by the Magistrate and sentenced to pay a fine of Rs. 20. So far as I have been able to discover, there is no direct authority either in the Colonial decisions or in the English Law Reports on the question as to what the rights and duties of toll-keepers under such circumstances as those in which the appellant found himself are. At the argument before me Mr. H. J. C. Pereira, his counsel, called my attention to section 35 of the Criminal Procedure Code, which deals with the right of arrest by private parties in the case of cognizable offences. Where such an offence has been committed in the presence of a private person he is entitled to detain the offender until he can hand him over to the custody of the nearest police officer. But the offence alleged in the present case does not come within the category of "cognizable offences" under the Criminal Procedure Code, and the question before me has therefore to be decided upon general principles. It appears to me that a toll-keeper is entitled to detain a person who attempts, whether under the allegation of a legal right to do so or not, to pass a toll bar, for the purpose of securing his identification in any subsequent proceedings and for that purpose alone. If he can

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ascertain the identity of the alleged offender without detaining him, it is his duty to do so; and I think that he ought in all cases to endeavour to find out the name and address of the person in question. It may quite well be that in the present case a good deal of trouble would have been avoided if Captain Knatchbull had himself tendered his name and address in the first instance without awaiting the arrival of the constable. Perhaps he was relying on the simple fact of his being in uniform as a complete answer to the claim, or perhaps both sides had been exasperated by the words that had, as it appears from the record, passed between them. In any event the onus of justifying the detention rested with the toll bar keeper, and as he made no attempt to ascertain the complainant's identity before detaining him at the toll, it appears to me that he was guilty of "wrongful restraint" within the meaning of section 332 of the Penal Code. Both the conviction and the sentence must be affirmed.

I only desire to add a word on a subsidiary point in connection with the case which I have myself discovered since it was argued here a few days ago. It appears on the face of the evidence that Captain Knatchbull only passed the toll bar, and that he made no use of the bridge, the access to which the toll bar was intended to guard. It was held by Chief Justice Bonser in *Punchi Sinno v. Perera* (1), a prosecution under section 21 of the very Ordinance in question here ("The Tolls Ordinance, 1896"), that an owner of a vehicle must pass over a bridge in order to render the owner of such vehicle liable under the section I have referred to, and that the mere fact of his passing a toll bar does not entitle a toll-keeper to exact toll. "The Ordinance," said the learned Chief Justice, "does not make the owner of a vehicle liable to toll for passing the bar, but for using the bridge." I can only say, in view of section 21 of the Ordinance of 1896, that I should have had great difficulty in following this decision if the present case had in any way depended on its application, for section 21 of the Ordinance of 1896 imposes a penalty upon any person who forcibly takes his vehicle "through any place duly appointed for the collection of tolls". It appears to me that when once a passenger has passed through a toll bar he has crossed the statutory rubicon and must pay his toll, whether he chooses to avail himself of the privilege, which it purchases for him, of making use of the bridge or not.

(1) (1898) 3 N. L. R. 188.