

Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice.

1906.
October 5.

PELIS APPUHAMI *v.* PERERA.

P. C., Negombo, 5,586.

Toll when exigible—Authorized place for collecting toll—Notice—Ordinance No. 3 of 1896, ss. 4, 10, 17, 19, and 21.

Under section 21 of Ordinance No. 3 of 1896 (the Tolls Ordinance) a definite place must be appointed for the collection of toll; and toll is not exigible unless such place has been passed.

The place at which the notice required by section 17 of the Ordinance is suspended, is the authorized place for the collection of toll; and a person who does not pass such place is not liable to pay toll.

THE accused was charged under section 21 of Ordinance No. 3 of 1896 in that he, being liable to payment of Re. 1.50 toll in respect of a padda-boat, did fraudulently take his padda-boat under the bridge at the entrance of the Negombo canal. It appeared from the evidence that the accused passed the bridge but did not pass the toll station. The accused was convicted and fined Rs. 50.

In appeal.

H. A. Jayewardene, for the accused, appellant.

Sampayo, K.C., for the complainant, respondent.

Cur. adv. vult.

5th October, 1906. LASCELLES A.C.J.—

The appellant, who is a tindal in the employment of the Ceylon Tea Plantations Co., was convicted under section 21 of the Tolls Ordinance (No. 3 of 1896) on the charge that he, being liable to payment of Re. 1.50 toll in respect of a padda-boat, did fraudulently take his padda-boat under the bridge at the entrance of the canal. The appellant appeals from this conviction on the ground that he did not take his boat past the place duly appointed for the collection of tolls.

The circumstances in which the appeal has arisen are as follows. Section 4 of Ordinance No. 3 of 1896 provides that toll shall be levied *inter alia* in respect of the canals mentioned in schedule F. This schedule includes the Negombo canal. Section 10 provides that tolls shall be collected at the places specified in schedule F. Schedule F under the heading "Canals" specifies the place of collection for the Negombo canal as follows:—"Negombo, at or near the Bridge (at the entrance of the canal) on the Custom-house road, and at or

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near the bridge at Pallansena at the junction of the canal with the Kammal ferry". As a matter of fact the toll station has been fixed at a point 154 yards on the Negombo side of the custom-house bridge.

The appellant on the day in question, coming from Colombo, passed under the bridge and discharged his cargo at Mr. Carey's store, which is situated between the bridge and the toll station about 34 yards on the Colombo side of the latter. The appellant contends that he is not liable to toll, inasmuch as he did not pass the toll station. The renter on the other hand contends that, though, as a matter of convenience, the toll station has been fixed 154 yards from the bridge, he is nevertheless entitled to pay toll on all boats passing under the bridge.

It is clear that section 21 contemplates a definite fixed point on the road or canal being appointed for the collection of toll, and that toll is not exigible unless the point has been passed.

The question for determination is, where is the exact place where toll is exigible in a case like the present, where the schedule defines the place of collection as "at or near" a certain place? In my opinion the answer is supplied by sections 17 and 19 of the Ordinance, which require every toll-keeper, under pain of punishment, to keep suspended "at some conspicuous place *immediately adjoining any place at which tolls are hereby authorized to be collected*" a notice specifying the amount of toll payable and certain other particulars. The place where the notice is suspended thus indicates the authorized place for collecting tolls. In the present case the notice, as might be expected, was suspended at the toll station. The toll station must therefore be taken to be the place at which toll is authorized to be collected, and as the appellant did not pass that place he cannot lawfully be convicted.

The conviction must be quashed.

