

1912.

*Present: Pereira J.*

SILVA v. DINESHAMY.

805—P. C. Matara, 3,985.

*Thoroughfares Ordinance, No. 10 of 1861, s. 94—Leaving a cart in the middle of the road without anybody in charge of it.*

Where a person by neglect left a cart with a bull tied to it in the middle of the road without anybody in charge of it—

*Held, that he was not guilty of an offence under section 94 of "The Thoroughfares Ordinance, 1861."*

THE facts are set out in the judgment.

*De Jong*, for the accused, appellant.—There is no evidence that the accused wilfully prevented Don Bastian from passing along the road. The accused moved the cart away as soon as Don Bastian spoke to him. The conduct of the accused in leaving the cart in the middle of the road and going to the boutique does not constitute wilful obstruction.

*Cur. adv. vult.*

November 14, 1912. PEREIRA J.—

In this case the accused has been found guilty under section 94, sub-section (11), of Ordinance No. 10 of 1861. The offence described in that sub-section is wilfully preventing any person or carriage from passing along a thoroughfare. The evidence in the case does not show that there was any wilful prevention at all on the part of the accused of any person or carriage from passing along a thoroughfare. Don Bastian, the police officer, is the most important witness in the case; in fact, he is the person who is alleged to have been obstructed. His evidence is that he was passing along in a hackery when he found a cart with a bull tied to it on the middle of the road without anybody in charge of the cart. He says he cried out "Who is the owner of the cart?" and then the accused came from behind a boutique and said the cart belonged to Mrs. Ekanayake, and the accused moved the cart away. It is clear from this evidence that this is rather a case of neglect in leaving a cart on the high road than of wilfully preventing any particular individual from passing along a thoroughfare. I do not think that on this evidence it can be said that the accused is guilty under section 94 of the Thoroughfares Ordinance, whatever other provision of the law he may have contravened. Possibly he has committed a breach of a Gansabhawa rule.

I set aside the conviction and acquit the accused.

*Set aside.*