

1928.

Present : Drieberg J.

LETSCOUNT *v.* BABUN *et al.*

256A—*P. C. Colombo, 27,143.*

Customs Ordinance—Removal of a boat from Grain Jetty—Unlawful possession—Wharf or quay—Ordinance No. 17 of 1869, s. 131A.

The removal of a boat anchored in the sea near a grains jetty does not amount to a removal from a wharf or quay within the meaning of section 131A of the Customs Ordinance.

A PPEAL from a conviction by the Magistrate of the Joint Police Court of Colombo.

U. Weerasinghe (with R. C. Fonseka), for accused, appellants.

June 19, 1928. DRIEBERG J.—

The appellants were arrested by the Harbour Police in the early hours of the morning while in possession of a rowing boat No. P 58 (in which they had approached some ships) for which they could not satisfactorily account and which was reasonably suspected to have been stolen. They were convicted and sentenced under section 131A of Ordinance No. 17 of 1869, the material portions of which are as follows :—

“ Any person who within the limits of any port is found or is proved to have been in possession or in charge of any article which is suspected to have been stolen from any

ship, boat, quay, warehouse, or wharf of any part of this Colony may be charged with being, or having been, in possession of property which is reasonably suspected to have been stolen; and if such person does not give an account to the satisfaction of the Police Magistrate as to how he came by such article, and the Police Magistrate is satisfied that, having regard to all the circumstances of the case, there are reasonable grounds for suspecting such article to have been stolen, such person shall be guilty of an offence”

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The Police later ascertained that the boat belonged to H. S. Perera, a boat contractor, who had four boats which were moored with chains and anchors near the Kochchikade Grain Jetty. These are his words:—Bastian Perera who is the superintendent of H. S. Perera's boats says “she was properly moored with chains and anchors at her proper moorings near the Kochchikade Grain Jetty” and had been cast drift.

The learned Magistrate has rightly rejected the explanation of the first appellant that he took the boat with the permission of John Perera, an employee of H. S. Perera.

The boat is said to be worth Rs. 250. In my opinion, where there is not merely suspicion of the article in question having been stolen, but, as in this case, positive evidence that it was stolen, it would be more appropriate to charge the offender with the offence of theft, but apart from this the conviction cannot stand, for the boat was not removed from any “ship, boat, quay, warehouse, or wharf.”

I presume this case was regarded as one of a removal from a wharf or quay. A wharf, however, has got a recognized meaning. In the early statutes it meant “a broad place near to a creek or hithe of water, upon which goods and wares are laid, which are to be shipped and transported from place to place.” (*Termes de la Ley.*)—Stroud, Title Wharf.

It is also extended to any structure or platform built on the shore of a harbour and extending from shore to deep water so that vessels might lie by it and receive and discharge cargo. See *Ghour*, Vol. II., Art. 4095, and 21 Halsbury, Art. 704, and the cases there cited.

A quay is nothing more than a landing place.

The Grain Jetty at Kochchikade can rightly be described as a wharf or quay, but I do not think that the removal of a boat moored or anchored in the sea near it can be said to be a removal from a wharf or a quay.

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The appeal is therefore entitled to succeed, and I set aside the conviction of the appellants. I have not found it necessary to deal with the other aspects of the case, but I may say that the second appellant would in any case have been entitled to an acquittal. There is nothing to show that he had a dishonest intention in the removal of the boat as he was merely acting under the orders of the first appellant, who employed him for the purpose.

Set aside.
