Present : Schneider A.J.

1919

TOUSSAINT *v.* SILVA.

711—P. C. Galle, 10,686.

Road Ordinance, No. 5 of 1861, section 91, sub-section (5)—"Land contiguous to any road."

A person whose land is not in contact with the road cannot be convicted, under section 91 of the Road Ordinance, for suffering water to flow from such land into or upon any such road.

The word "contiguous" in section 91, sub-section (5), should be given its ordinary meaning of touching or "in contact with."

THE facts appear from the judgment.

A. St. V. Jayawardene, for accused, appellant.

J. S. Jayawardene, for complainant, respondent.

October 16, 1919. SCHNEIDER A.J.—

The charge in this case was read to the accused from the summons in which he was charged with mischief by "forming out a drain and stopping the same few yards away from the Hiyare Reservoir road, an offence punishable under section 409 of the Penal Code, section 91 of Ordinance No. 5 of 1861."

The Magistrate apparently saw that the charge was badly framed, and accordingly on a later date he records that he framed a "fresh charge" as follows:—"That the accused did, being the owner of a land contiguous to the Hiyare Reservoir road, suffer the passage of water to such road—section 91 (5) of Ordinance No. 10 of 1861." From the evidence and his judgment it is obvious that he tried the accused on this one charge, and that alone. But in the judgment sheet there is a jumble of the charge as set out in the summons and in the fresh charge framed by the Magistrate, and the accused is set out as having been convicted of mischief under section 409, and also of an offence under section 91 of Ordinance No. 10 of 1861. This is clearly a mistake, but respondent's counsel contended that it was not, and that the accused had been convicted as set out in the judgment sheet.

It is not possible for me to entertain this contention in view of what appears in the record of the case as a whole.

I, therefore, regard the appeal as from a conviction under section 91 (5) of the Road Ordinance, 1861.

The only point involved in the appeal is the meaning to be attached to the word "contiguous" in section 91 (5).

1919.

SCHNEIDER A.J.

Toussaint v. Silva

The words are: Section 91. "Whosoever shall commit any of the following offences on or relating to any thoroughfare shall be liable to a fine not exceeding five pounds.

"(5) Any owner of any land contiguous to any road who shall suffer any water to flow from such land into or upon any such road."

The facts as found by the Magistrate are accepted by both parties to the appeal. They are as follows:—The accused is the owner of a land on a steep hill which he has cleared. The water from this land falls into a drain from which it finds its way on to the public road through an intervening belt of jungle a few feet broad. This intervening jungle is not a road reservation. The question is: Can the accused be regarded the owner of land contiguous to the road in the circumstances? The learned Police Magistrate has held that he can, because the word "contiguous" does not mean "immediately contiguous," and that to put on the word that meaning would be to utterly defeat the object of the section.

The appellant contends that the word "contiguous" should be given its ordinary meaning of "touching" or "in contact with." I am inclined to agree with this contention. The section in question is a penal provision and should be strictly interpreted. If "contiguous" does not mean only "touching" but "in the neighbourhood of," what would be the limit within which lands are to be deemed to be in the neighbourhood. A land on a hill-side miles from a high road may discharge water into the high road through the intervening land. Is such a land to be deemed as contiguous? What then would be the liability of the owners of the intervening lands? If they incur no liability because the owner of the land on the top of the hill where the water first gathers is liable, is the test of liability to be determined by a consideration on whose land the water first gathered and began to flow down? If the water in its descent to the road gathers volume from contributions from the intervening lands, are all the owners liable or some of them, and in what proportion, or is only one of them liable?

It appears to me that all these difficulties are avoided by giving to the word "contiguous" its natural meaning of "touching" or "in contact with." The section was evidently intended to restrain the owner obviously liable—he from whose land the water ultimately found its way into the thoroughfare.

In *Haynes v. King*,[1] North J. in interpreting the word "contiguous" used in a lease said: "I think the word 'contiguous' was used there by some one who did not fully understand its meaning. I do not think it was intended to have its strict meaning, viz., 'touching.'" It is hardly necessary for me to say here that although a word may be given an extensive interpretation in the construction of a contract, the Courts will not follow the same rule

[1] *(1893) 3 Chancery 439.*

in construing a statute. In my opinion the Legislature meant the word "contiguous" to have its ordinary meaning of "touching" in the section under consideration.

This view finds support in the decision of *The Attorney-General v. Silva*.[1]

I would, therefore, allow the appeal, and set aside the conviction and acquit the accused.