1913.

*Present:* Wood Renton J.

RAMAN *v.* ISMAIL.

*82—P. C. Trincomalee, 6,903.*

*Allowing cattle to stray on the public road—Evidence that the animal caused inconvenience or danger to the public—Ordinance No. 16 of 1865, s. 53.*

Where a person left a cow on an esplanade which was unfenced, and where the cow strayed on to the high road of its own accord,—

*Held*, that he was guilty of an offence under section 53 (3) of Ordinance No. 16 of 1865.

In a conviction under this section, it is not necessary for the prosecution to lead affirmative evidence that the presence of the cow on the high road caused inconvenience or danger to the public. *Saraks v. Ponnasamy*[1] *distinguished.*

Section 53A, enacted by Ordinance No. 17 of 1908, does not create an offence at all; it only provides a procedure for the purpose of enabling the police to seize and to deal with stray cattle, and the charges recoverable from the owner of such cattle, if he comes forward to claim them, are in the nature of fees and not of fines. The recovery of such fees is no bar to a prosecution under section 53 (3) of the Ordinance No. 16 of 1865.

THE facts appear from the judgment.

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

*De Saram, C.C.*, for the Crown.

February 21, 1913. WOOD RENTON J.—

This case raises rather an interesting question under the Police Ordinance, No. 16 of 1865. The appellant was charged in the Police Court of Trincomalee under section 53 (3) of that Ordinance with having left his cow on the public road in such a manner as to cause inconvenience or danger to the public. The Police Magistrate has convicted him, and has imposed a nominal penalty of Re. 1. The appeal is, of course, on points of law. The appellant's counsel contends, in the first place, that section 53 (3) of Ordinance No. 16 of 1865 can find no application in a case like the present, where the appellant had left his cow on an esplanade on which he was entitled to leave it, and where the cow had strayed, as it did stray, of its own accord on to the high road. The Police Magistrate holds on the facts that the place where the cow was left was unfenced, and that there was nothing to prevent it from straying on to the high road if it pleased. That finding would be sufficient to bring the appellant

[1] *(1910) 5 Bal. 38.*

both within the language of section 53 (3) of Ordinance No. 16 of 1865 and within the mischief against which that enactment is directed.

The next point taken on the appellant's behalf is that he has already been "fined" under the provisions of section 53 A of Ordinance No. 16 of 1865, which was enacted and added to the principal Ordinance by Ordinance No. 17 of 1908. If this argument were well founded, the appellant, having been fined under section 53 A, could not be subsequently convicted under section 53, of Ordinance No. 16 of 1865 by reason of the provisions of section 8 of the Interpretation Ordinance, No. 21 of 1901. I agree, however, with the Police Magistrate that the new section enacted by Ordinance No. 17 of 1908 does not create an offence at all; it only provides procedure for the purpose of enabling the Police to seize and to deal with stray cattle, and the charges recoverable from the owner of such cattle, if he comes forward—which he is in no way bound to do—to claim them, are in the nature of fees and not of fines. I think that that point of law must fail.

The last argument on behalf of the appellant is that there is here no affirmative evidence that the presence of the cow on the high road caused inconvenience or danger to the public. If those words in the section just referred to are to be interpreted in the sense that the section is inoperative until inconvenience or danger to the public has been actually caused, and the fact that it has been so caused is affirmatively established in the Police Court, the enactment will be a dead letter. In the case of *Saraks v. Ponnasamy* [1] I held that it is necessary, in prosecutions under section 53 (3) of Ordinance No. 16 of 1865, that there should be affirmative evidence that the act or the omission, which forms the subject of the charge, is of such a nature as to cause inconvenience or danger to the public. In *Saraks v. Ponnasamy* [1] the appellant was a ricksha cooly. The only evidence against him was that he had left his ricksha on the side of the public road. There was nothing to show that, from the position it was placed, it must necessarily be a source of inconvenience or danger to people who were making use of the road. In that state of the facts, I held that the appellant had committed no offence. The circumstances here, however, are different. We are not dealing with a stationary object, but with a straying animal. At the time of its seizure it was actually on the road, and the police constable who arrested it said that it would have been a nuisance to any motorist or bicyclist who was making use of the road. There is no evidence on the other side, and under the circumstances I think that this is sufficient affirmative evidence to justify the appellant's conviction.

The appeal must be dismissed.

*Appeal dismissed.*

[1] *(1910) 5 Bal. 38.*