

1922.

Present : Porter J.

NAIR v. MALLIS APPU

331—P. C. Badulla, 1088.

*Leaving cart on the grass by the road side—Road includes reservation—
Thoroughfares Ordinance, No. 16 of 1865, s. 53.*

The leaving of a cart on the grass by the side of the road longer than is required for loading and unloading, &c., is an offence punishable under section 53 (3) of Ordinance No. 16 of 1865.

The term "road" includes land adjoining the road which was reserved for its protection and benefit.

THE facts appear from the judgment.

Vythialingam, C.C., for Crown, respondent.

July 25, 1922. PORTER J.—

This is an appeal by the Crown against an acquittal by the Police Magistrate of Badulla. The accused was charged with an offence punishable under section 53 (3) of Ordinance No. 16 of 1865. The charge was that he did leave his double-bullock cart on the side of the public road longer than is required for loading and unloading goods, or for taking up or setting down passengers, and thereby committing an offence. The learned Magistrate after hearing the complainant whose evidence was to the effect that on March 5 at about 2 A.M. he saw the accused's cart halted near the bund of the road leading to the railway station. The cart was empty and the bulls had been unyoked. The cart was on the grass by the side of the road, and was not on the road itself. On this the learned Magistrate says: "On complainant's own statement, I discharge the accused. The reservation is not a part of the public road intended for traffic, and accused cannot, therefore, be charged with obstructing the same, obstruction being the essence of this prosecution."

The learned Magistrate's attention was not apparently drawn to the definition of the word "road." The word "road" by section 4 of Ordinance No. 10 of 1861 shall include—

- (a) All public carriageways, cartways, and pathways, as well as all bridges, drains, and embankments, causeways, and ditches, belonging or appertaining to a road ;
- (b) All land adjoining any road which has been reserved for its protection or benefit ;
- (c) All land which has been marked off and reserved for the construction of any road.

That is quite sufficient, I think, to include the grass bund on which the accused's cart was standing. I therefore set aside the order discharging the accused, and send it back to the Magistrate for trial.

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Set aside.
