

1941.

Present : Moseley S.P.J.

JAYASEKERA v. APPU.

551—M. C. Galle, 30,220.

Wrongful restraint—Cutting a drain across a road—Essence of offence—Obstruction to person—Penal Code, s. 332.

Obstruction of a vehicle alone in the absence of evidence that any person had been obstructed does not amount to wrongful restraint.

A PPEAL from a conviction by the Magistrate of Galle.

Sri Nissanka (with him E. B. Wikremanayake), for 2nd accused, appellant.

L. A. Rajapakse (with him K. K. Subramaniam), for complainant, respondent:

Cur. adv. vult.

November 5, 1941. MOSELEY J.—

The appellant was convicted on a charge of having “cut a drain across a cart way . . . so as to obstruct voluntarily the users of this road from proceeding in the direction in which the public have a right to proceed,” an offence punishable under section 332 of the Ceylon Penal Code. He appealed on the ground that the complainant had failed to prove that the path obstructed was a public path.

The appeal was argued on this footing, but it seems to me that it must be decided on a point which goes more directly to the root of the matter. The essence of the offence is that the obstruction alleged shall be to a *person*. “Obstruction of a vehicle alone (when no men are obstructed) cannot amount to wrongful restraint.” (*Ratanlal: The Law of Crimes, 14th ed., page 827.*)

In applying for process the complaint affirmed that the drain in question was cut obstructing the public road. He added “I cannot use it now”. Thereafter the proceedings appear to have been continued upon the footing that the obstruction has been caused in respect of a cart road. The co-accused of the appellant, who was acquitted, in giving evidence described the drain as fairly broad and one across which one had to jump. The appellant himself said that anyone can jump over it. The learned Magistrate in the course of his statement of reasons found that the appellant in cutting the drain did so to obstruct the user of that cart way and proceeded to convict the appellant on the ground that the obstruction caused “whether it be to the cart road or to the foot path was not caused *bona fide*”. He does not appear to have directed his mind to the question of whether or not any person had been obstructed. For this reason I am of opinion that a conviction of the offence defined in section 332 of the Ceylon Penal Code cannot be sustained. I may add that in my opinion process should not have been issued in the absence of explicit evidence that the complainant personally had been obstructed.

The appeal is allowed. The conviction and sentence is set aside.

Set aside.