

1932

Present : Akbar J.

CHAIRMAN, DISTRICT ROAD COMMITTEE v. SILVA.

962—P. C., Balapitiya, 17,533.

Road Ordinance—Prosecution under section 86—Road under control of Village Committee—Powers of District Road Committee—Ordinance No. 10 of 1861, s. 86.

A District Road Committee has power to institute a prosecution under section 86 of the Road Ordinance, No. 10 of 1861, in respect of a road, which is under the control of a Village Committee.

A PPEAL from a conviction of the Police Magistrate of Balapitiya.

Peter de Silva, for accused-appellant.

Wendt, C.C., for the Crown.

February 15, 1932. AKBAR J.—

I issued notice on the Attorney-General for argument on the question whether a prosecution under section 86 of Ordinance No. 10 of 1861 could be brought by a District Road Committee in respect of a road which was under the control of a Village Committee. In spite of the

section vesting all roads, &c., within an area administered by the Village Committee in the Village Committee, I am of opinion that the District Road Committee has power to enter a prosecution under section 86 of the Road Ordinance, No. 10 of 1861, in respect of such roads. Unlike the Local Government Ordinance, No. 11 of 1920, which expressly diverted the authority of the District Road Committee over roads within the area of a local authority created under that Ordinance and transferred it to the Urban District Council, there is no section in the Village Communities Ordinance transferring the authority of a District Road Committee over roads within the area administered by a Village Committee to the Village Committee. Apart from this point, however, I think there is no evidence in this case of the kind required to prove that this road was a public road within the meaning of the Road Ordinance. It has been laid down repeatedly in several cases by this Court, especially in the cases of *Hodson v. Mohammed*¹, *Saravanamuttu v. Sathasivam*², *Allis Hamy v. Arnolis Hamy*³ and *Sandarasekera v. Sinnathamby*⁴, that there must be either proof that the road was constructed by a public authority or that it has been used as a public road by people inhabiting the neighbourhood from time immemorial. There is no such evidence in this case. The Mudaliyar, Wellaboda pattu, stated that he had known this road for the last 10 years and that it had been used occasionally as a cart road and maintained by the Village Committee for the last 12 years. The Vidane Arachchi says that the road was used as a public road for over 20 years and that it was maintained by the Village Committee. The maintenance for a few years by the Village Committee is not the kind of evidence required according to our law as stated in the cases quoted by me above, which will make the road a public thoroughfare. There must be either evidence of user from time immemorial or it must have been constructed by a public authority. In this case the evidence is not sufficient to prove that the road was a public thoroughfare within the meaning of the Road Ordinance. Further, the mere statement by the Mudaliyar or the Vidane Arachchi that this road had been maintained by a Village Committee for a few years appears to be hearsay evidence. According to the accused there was a footway in front of her house which was used occasionally by the public, but she denied that it was a public footway. Then she went on to state that the Village Committee tried to enlarge this pathway into a cart road for the first time after she built the house, and that this prosecution was an attempt to take a portion of her land for the erection of the cart road without payment of any compensation for the portion of the land which was to be absorbed into the cart road. There is some evidence to support this defence in the record. As I have stated, there is no evidence to prove that this road along which the accused is said to have built a house is a public road within the meaning of the Road Ordinance, No. 10 of 1861, according to the rules laid down by the authorities cited by me. The conviction is set aside and the accused acquitted.

Set aside.

¹ 23 N. L. R. 348.

² *Tambiah's Reports*, 96.

³ 1 *Tambiah's Reports* 26.

⁴ 25 N. L. R. 139.