

1908.  
February 25.

*Present:* Mr. Justice Wood Renton.

KASUPATHY *et al.* v. KANDIAH *et al.*

*P. C., Batticaloa, 25,843.*

*Ordinance No. 3 of 1896, ss. 9, 20, and 22; Ordinance No. 21 of 1905, s. 2—Conveying passengers across ferry—"Ferry"—Boats duly licensed.*

WOOD RENTON J.—"Ferry" is a franchise to carry persons over water between two *termini*; and it may be constituted over any description of water.

WOOD RENTON J.—The term "Ferry" in section 9 of Ordinance No. 3 of 1896, includes the subject-matter—whatever it may be—in regard to which a right of ferry has been created.

**A** PPEAL from convictions under sections 20 and 22 of Ordinance No. 3 of 1896.

The facts sufficiently appear in the judgment.

*Van Langenberg* (with him *H. A. Jayewardene*), for the accused, appellants.

*Sampayo, K. C.* (with him *Wadsworth*), for the respondents.

*Cur. adv. vult*

February 25, 1908. WOOD RENTON J.—

The appellants have been convicted under Ordinance No. 3 of 1896, the first, of the offence of conveying, contrary to section 22, passengers for hire, not being a duly appointed toll-keeper, across a ferry on Batticaloa lake; the second and third, of the offence of demanding or taking in contravention of section 20 toll in respect of such illegal conveyance. On behalf of the respondent, Mr. de Sampayo took the preliminary objection that no appeal lay as regards the first and second accused, inasmuch as each had been

sentenced to a fine of Rs. 25 only; but Mr. Van Lañgenberg, although he argued the case of the third accused only, who was fined Rs. 50, invited me to give his other clients the benefit of the points that he made in favour of the third accused if they proved successful. I have come, however, to the conclusion that the conviction is right. Two contentions were pressed upon me in support of the appeal: (i) that the Legislative Council had no power under section 9 of Ordinance No. 3 of 1896 to establish a toll at the place in question in this case, inasmuch as that section did not extend to lakes, and the respondent could not get the benefit of the inclusion of " lakes " in the definition of " rivers," which is added to section 9 of Ordinance No. 3 of 1896 by section 2 of the amending Ordinance of 1905 (No. 21 of 1905); (ii) that, as the evidence showed that the third accused did not personally " demand or take " the prohibited toll, he could not be convicted under section 20 of Ordinance No. 3 of 1896.

1908.  
February 25.  
—  
WOOD  
RENTON J.

(i) I think that the term " ferry " in section 9 of Ordinance No. 3 of 1896 clearly justifies the establishment of the toll in question. The strict legal meaning of " ferry " is a franchise to carry persons over water between two *termini* (see *Cowes Urban District Council v. Southampton, &c., R. M. S. Packet Co.*<sup>1</sup>). It may be constituted over any description of water; and, in my opinion, the term " ferry " as used in section 9 of Ordinance No. 3 of 1896 includes the subject-matter—whatever it may be—in regard to which a right of ferry has been created.

(ii) I do not propose to decide the question whether section 20 of Ordinance No. 3 of 1896 applies only to cases in which a person charged under that section has demanded or taken toll in person (*cf. Bell v. Senanayaka*<sup>2</sup>), for the evidence in the present case shows that the third accused abetted a personal demand or taking of toll by the second accused, and that is quite sufficient to support the conviction (*cf. Cadiravelu v. Suppaiya*<sup>3</sup>).

Mr. Van Langenberg, in the argument before me, scarcely touched on the point, taken in the Court below, that the fact—if it be a fact—that the third accused's boats are duly licensed for the conveyance of passengers would entitle him to employ them in contravention of sections 20 and 22 of Ordinance No. 3 of 1896. I entirely agree with the learned Police Magistrate that this contention is unsound. If any authority is needed on the question, it will be found in the cases cited in the *Encyclopædia of the Laws of England, 2nd edition, tit. " Ferry."*

I affirm the convictions and sentences.

*Appeal dismissed.*

<sup>1</sup> (1905) 2 K. B. 287.

<sup>2</sup> (1904) 7 N.L.R. 126.

<sup>3</sup> 8 (1904) N. L. R. 75.