

1944

Present: Soertsz S.P.J.

PABILIS SINGHO, appellant, and GNANAPRAGASAM,
Respondent.

986—M. M. C. Colombo, 48,044.

Police Ordinance (Cap. 43), section 64 (f)—*Exposing clothes for sale on pavement—Meaning of word "passengers"—Obstruction to pedestrians.*

Where the accused was charged under section 64 (f) of the Police Ordinance with having exposed for sale a tray containing clothes on the pavement so as to obstruct pedestrians.

Held, that the accused had committed no offence under the section.

The word "passengers" in the section does not mean "pedestrians".

A PPEAL from a conviction by the Municipal Magistrate. Colombo.

A. H. C. de Silva, for accused, appellant.

M. P. Spencer, C.C., for Attorney-General.

(*ur. adv. vult.*)

December 21, 1944. SOERTSZ J.—

It is difficult to imagine how it came about that, in this case there is called in question a state of things that generations of citizens have endured, if not with pleasure, at least with Stoicism.

The appellant was charged under section 64 (f) of the Police Ordinance (Cap. 43) with having "exposed for sale a tray containing clothes on the pavement so as to obstruct pedestrians".

The Magistrate convicted him and sentenced him to pay a fine of Rs. 15.

The appellant appeals on a point of law, namely, that on the evidence no offence under the section adduced in the charge, has been established.

Section 64 (f) says that it is an offence for any person to expose "any article or thing, on the roads or streets, and which may obstruct passengers or frighten horses". Overlooking the grammatical solecism that results from the redundant 'and', one cannot overlook the requirement that the article or thing exposed should be such as would obstruct *passengers* or frighten *horses*. Those are the only species of the animal kingdom contemplated by this section. In the present case horses are not concerned, only passengers—and the question is who are *passengers*. The charge seeks to equate *pedestrians* to *passengers*. In other words the two words are regarded as synonymous. The evidence is on the same footing. The Police Constable says—"This stall caused obstruction to pedestrians". I do not think that there is any justification for the view that 'passengers' in this section means 'pedestrians'. Etymologically, there is no justification for the Oxford Dictionary says that, although originally the word passenger meant any passer by or

passer through, in modern usage it means one who travels in some vessel or vehicle. The phrase 'frighten horse' in this sub-section also indicates that that is the meaning given to the class 'passengers' in this sub-section. Not only that an examination of the whole of section 64 supports this view, for this section speaks of passengers, passers by, and the public and thereby indicates that these words are used not indiscriminately but with particularity.

I would set aside the conviction and acquit the appellant.

Set aside.
