

1934

Present : Drieberg J.

JAMES *v.* FERNANDO *et al.*

785—6—P. C. Colombo, 7,749.

Cattle—Allowing cattle to stray—Animal under control of keeper—Tied or tethered—Public Thoroughfares Ordinance, No. 10 of 1861, s. 94 (1).

Where an animal is taken to a place by its keeper and kept under control by means of a rope by which it is secured,—

Held, it cannot be said to be “tied or tethered or straying on a thoroughfare” so as to make its owner liable to a charge under section 94 (1) of the Public Thoroughfares Ordinance.

A PPEAL from a conviction by the Police Magistrate of Colombo.

S. Alles, for appellants.

Gunasekera, C.C., for respondents.

February 7, 1934. DRIEBERG J.—

The appellants were convicted of removing a calf from the lawful custody of the complainant, a person authorized by law to seize it. The offence is provided for by section 94 (2) A of the Public Thoroughfares Ordinance, No. 10 of 1861. The seizure would have been lawful if the calf was found “tied, tethered, or straying on a thoroughfare”. The complainant said that the calf was grazing on the grass by the side of the road, a rope was attached to the animal but there was no one holding it. When he seized it, the first appellant came up to him and struck him and the second appellant pulled the animal away by the rope.

The case for the defence was that there was a boy holding the rope and that when the complainant seized the calf the first appellant went up and took it away from him. The learned Police Magistrate dealt with the case as one of unlawful removal only. There was no charge based on the violence to the complainant. He did not expressly disbelieve the

evidence for the defence. He held that even if the calf was in the charge of a keeper who held the rope, the seizure was unlawful, and he convicted the appellants. I think that in these circumstances the case should be considered on the facts presented by the defence, and the question is whether the calf in these circumstances can be said to have been seized when "tied, tethered, or straying upon the public thoroughfare". The place where it was grazing is a public thoroughfare, being land adjoining a road and reserved for its protection or benefit. An animal cannot be said to be straying on a place to which it has been taken by its keeper who has it under control, nor can it be said to have been tied or tethered. Both these expressions imply that the animal is secured to some fixed point, for example, a stake or post. The word "tied" suggests an animal being secured in such a manner as to restrain or hinder it from action or movement, either completely or within very narrow limits. To "tether" an animal is to secure it so as to allow it a certain definite and limited range of movement. Cattle secured to a post by a rope of a length sufficient to allow of their grazing are said to be tethered. It is the length of the tether which determines the scope allowed. But it appears to me that the word is entirely inapplicable where the end of the rope by which the animal is secured is not attached to some fixed point but is in the hands of some person who can control the movements of the animal.

The seizure not being lawful, the appellants were not guilty of an offence in removing the calf from the custody of the complainant.

The conviction is set aside and the appellants are acquitted.

Set aside.

