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CHELLATURAI *v.* VELUPILLAI.

P. C., Chavakachcheri, 7,953.

Toll Ordinance, No. 8 of 1896, s. 4—"Every vehicle not carrying a load and drawn by two oxen, 15 cents"—Toll on return journey—Sections 6 and 14—"Unless such vehicle shall carry a different load."

Where a cart loaded with cocoanut husks passed a toll station and paid 15 cents as for an unloaded cart under section 6 of the Toll Ordinance, 1896, and the toll-keeper demanded and received 15 cents when the same cart returned empty on the same day,—

Held, the toll-keeper was justified in taking such toll on the return journey, as section 14, which deals with tolls payable on return journeys, does not limit the operation of the words "every vehicle not carrying a load and drawn by two oxen, 15 cents," occurring in section 4.

Per WENDT, J.—The effect of section 14 may be summed up thus:—

If a vehicle which passed the toll loaded returns the same day with the same load, it is altogether exempt.

If it has a different load, it must pay the full toll for a loaded vehicle.

If it makes a second outward journey with the same kind of load, it is liable to one-half toll only; but if it carries a different load, it must pay the full rate.

IN this case the accused, being a toll-keeper at Kopai, was charged under section 19 of Ordinance No. 3 of 1896 with recovering a sum of 15 cents as toll which was not due. It appeared that the complainant's cart drawn by two oxen passed the toll station one day loaded with cocoanut husks, after payment of 15 cents in terms of section 6 of the Ordinance, and that when it returned empty the same day the accused demanded and received a further sum of 15 cents.

The Magistrate found him guilty and sentenced him to pay a fine of Rs. 10.

The accused appealed. The case was heard in appeal on 21st May, 1903.

Wadsworth, for appellant.—The Toll Ordinance grants exemption from toll on the return journey for loaded carts only. Section 14 provides that no toll shall be levied from a cart on its return journey, unless such cart returns with a different load. "Different" implies that the cart must have been previously also loaded. In that section there is no provision for carts going empty and returning empty within twenty-four hours. Where the Legislature actually intended an exemption from tolls, it clearly expresses itself. For instance, section 4 provides for fishing boats going to be or returning from having been employed, &c. Section 7 (2), in exempting manures, provides for vehicles going to

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be or returning from being employed. Section 13, in exempting conveyances employed in conveying the Governor, provides for conveying or returning from conveying. The Ordinance should be strictly construed. The deficiencies of the Legislature cannot be remedied by the judiciary. *Rámanathan, 1872, p. 264.*) In *2 Lorenz, p. 60*, it was held that the horses of a mail coach which were taken back over the same bridge were not exempted from toll, as they were not specially exempted. Since carts loaded with cocoanut husks are to be regarded as unloaded carts under section 6, the toll-keeper was justified in demanding toll on the return journey by the words "every vehicle not carrying a load and drawn by two oxen, 15 cents," which occur in section 4. The charges for empty carts are so low that, even if they pay on their return journey, the amount paid would be about half the amount payable for loaded carts.

No appearance for respondent.

Cur. adv. vult.

25th May, 1903. WENDT, J.—

This appeal raises a question under the Toll Ordinance, 1896. The appellant, who is a toll-keeper, has been convicted and fined under section 19 of the Ordinance for having demanded and taken from the complainant a toll which was not payable under the provisions of the Ordinance. About 8 A.M. on the day in question the complainant took a cart drawn by two oxen and loaded with cocoanut husks through the toll to Maruparai. He then paid the appellant a toll of 15 cents as upon an unloaded vehicle, in accordance with the provisions of section 6 of the Ordinance. At 10 A.M. the complainant returned from Maruparai with the cart empty. The accused then demanded and took another toll of 15 cents as for an unloaded cart. It was contended for the prosecution that on the return journey the cart was entitled to pass free of toll. The Magistrate accepted this construction of the Ordinance.

Section 6 of the Ordinance is in the following terms:— "From and after the day on which this Ordinance comes into operation vehicles and boats loaded with cocoanut husks in an unmanufactured condition, and with no other goods or merchandise, except the necessary tackle, apparel and provision of such boat and the crew thereof, shall pass as, and pay the tolls of, unloaded vehicles and boats only. If such vehicles and boats shall pass more than once the same day, loaded as aforesaid, no further tolls shall be demanded or taken for or in respect of them, but they shall pass free."

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According to the complainant, the effect of this section is "that payment of one toll for a cart loaded with husks would exempt that cart from further toll all day if it were engaged in carrying husks,"—meaning, I suppose, that as the cart will have to return before it could pass the toll with a fresh load, the exemption covers such return of the cart. It appears to have been further argued for the prosecution that there was no provision in section 14 imposing a toll on a cart returning empty on the same day as its journey out.

Now, it is clear that the cart on the journey in question comes within the terms of section 4, which imposes the tolls, and is liable to pay a toll of 15 cents, and the question is whether there is anything in the later provisions of the Ordinance which exempts it from that liability. Section 14 is the only section which deals with return tolls in general, and I think that the wording of it leaves no room for doubt that it was intended to apply to loaded vehicles only. Its effect may be summed up thus: If a vehicle which passed the toll loaded returns the same day with the same load, it is altogether exempt; if it has a different load, it must pay the full toll for a loaded vehicle; if it makes a second outward journey with the same kind of load, it is liable to one-half toll only; but if it carries a different load, it must pay the full rate. Then there is the proviso that no payment of toll upon any vehicle when unloaded shall in any manner affect any toll to which such vehicle is liable when loaded. There is nothing whatever in this section which exempts a cart returning empty, and therefore the general enactment in section 4 must have effect. The toll upon an unloaded vehicle amounts to only three-tenths of that leviable upon a loaded vehicle, and would appear to be a sort of irreducible minimum from which the Ordinance only in certain carefully specified cases grants exemption. A vehicle may go out empty and return empty, but must on each journey pay the full toll.

Then, as to section 6, I think it is equally clear with section 14. It first enacts that a vehicle loaded with cocoanut husks shall be charged as an unloaded vehicle, and next that if such vehicle again passes on the same day, loaded as aforesaid, it shall pass free. Here, again, there is nothing said of unloaded vehicles, but, on the other hand, such exemption as the section contains is expressly in favour of vehicles "loaded as aforesaid." It follows that here, too, the general enactment in section 4 operates to render unloaded vehicles liable to toll. It will be observed that section 6 has not the words which occur in section 14 as to the vehicle going "in a like direction" on a subsequent journey, and the consequence might have been that if the complainant's cart had brought back a nominal load of husks on its return journey it would have been

exempt from toll, as being a cart loaded as aforesaid. But this apparent anomaly does not entitle me to disregard the plain wording of the Ordinance. In view of that wording I must assume that the liability of a vehicle to toll when returning empty was the consideration which moved the Legislature to tax vehicles loaded with cocoanut husks at the exceptionally low rate prescribed by section 6. Where the Lgislature intended to exempt vehicles on return journeys, it has expressly said so. See section 4, paragraph 3; section 7, paragraph 2; and section 13.

The result is that the appellant was entitled to exact the toll which he demanded, and his conviction cannot be supported.

I therefore set it aside and acquit him.