

1898.
 July 16.

FERNANDO v. PEDRU APPU et al.

P. C., Pussellawa, 24,151.

Toll—Ordinance No. 3 of 1896, s. 21—Exemption of carts carrying tea leaf to factory on estate—Proviso 4 of s. 4 of Toll Ordinance—Factory standing on land outside the limits of estate, but serving estate as an adjunct—Liability of carts, laden with tea, passing from estate to factory through toll station.

Carts carrying green tea leaf from an estate to its factory standing far beyond the limits of that estate cannot, under proviso 4 of section 4 of the Ordinance No. 3 of 1896, claim exemption from toll leviable at a station duly established between the estate and the factory.

THE complainant, who described himself as the toll-keeper of Pussellawa, charged the accused with evading payment of toll due by them in respect of their carts loaded with green tea leaf and forcibly passing through the Pussellawa toll station, in breach of section 21 of the Ordinance No. 3 of 1896.

It appeared that the accused were carters of Rothschild estate driving carts with green leaf from that estate to a factory which, though lying $3\frac{1}{2}$ miles away from it, was built for it, and that the toll station in question lay between the Rothschild estate and that factory.

The Police Magistrate refused to issue process because, in a previous case brought by the same complainant against the Superintendent of Rothschild estate for evasion of toll, he held that the land on which the factory stood was part of the Rothschild estate, and was covered by the proviso 4 of section 4 of the Ordinance No. 3 of 1896, which exempted from toll vehicles "when loaded with green tea leaf to be manufactured in any factory standing upon the estate where such leaf has been plucked and gathered."

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On the complainant applying to the Supreme Court for a rule on the Police Magistrate for a writ of *mandamus* to compel him to issue process, Mr. Justice LAWRIE directed him to issue summons and hear and determine the case, on the strength of an affidavit read by complainant's counsel that the carts were being taken from an estate to a factory not standing on the estate whereon the leaf carried had been plucked or gathered.

The Police Magistrate heard the case and framed the following charged against the accused :—That they being liable to payment of toll fraudulently took vehicles; to wit, carts, through a place, to wit, the Pussellawa toll station, duly appointed for the collection to tolls, &c.

For the defence Mr. Crow, the Superintendent of the Rothschild estate, was called as a witness and deposed as follows :—

“ It is a straggling estate, three miles and more along the road. The estate ends about the 23rd milepost from Kandy. The factory stands between the 20th and 21st miles, and the toll bar between the 21st and 22nd miles. The factory is called Pussella Factory. The site was purchased by me to build a factory for Rothschild tea. It was once called Rothschild Factory. It manufactures Sogama estate leaf too..... The factory stands on a plot of land of about three acres..... This plot is on the Rothschild acreage, and in making a valuation of the Rothschild property, it would be taken into account. The gentleman in charge of the factory is my assistant.”

The Police Magistrate acquitted the accused, holding that the land on which the factory stood was part of Rothschild estate.

The Attorney-General appealed against the acquittal.

Pieris appeared for the appellant.

Dornhorst, for respondent.

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The order of acquittal is set aside.

The tea leaf in question was plucked on Rothschild estate; it was being taken along the cart road to Pussella Factory. The owner of the tea leaf claimed exemption from toll, alleging that the factory stands upon Rothschild estate.

It is proved beyond question that the factory does not stand on Rothschild.

Rothschild is an old and well-known estate. There was on it no suitable site for a tea factory, and to supply that want about three acres were purchased at a distance of three miles from Rothschild.

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No doubt this purchase is a valuable adjunct, and if the Rothschild estate were sold, probably the factory would be included in the sale, but it is clear that the land on which the factory stands is a new acquisition; that it is held on a different title from Rothschild.

The factory does not stand on an estate at all. It stands on a bit of land purchased, not for growing tea, but for the purpose of building a factory.

The Police Magistrate was not entitled to frame a charge of fraudulently taking vehicles through the toll.

The accused were entitled to an acquittal on that charge. The complaint was of "forcibly taking" the carts through a toll.

It is proved that the accused resisted the demand for toll. Mr. Crow says:—"I told my cartmen not to pay toll this year. "I instructed them to go through the toll forcibly, if necessary."

I alter the charge to one of passing through a toll "forcibly." The accused are found guilty, and are sentenced to pay a fine of 25 cents each. This small penalty is exacted because the men were acting in conformity with the judgment of the Police Court. If forcible passage through this toll be again made by the Rothschild people, the full penalty should be enforced.

