1921.

Present : Shaw J.

SARANGAPANY *v.* CORNELIS APPU.

332—P. C. Badulla, 14,492.

Halting a cart during night by the road side—Police Ordinance, s. 53 (3)—Proof of inconvenience or danger to the public.

The accused was charged under section 53 (3) of the Police Ordinance, 1865, with having halted his bullock cart on a side of a public road, without oxen being yoked, in such a manner as to cause inconvenience and danger to the public.

Held, that as the charge fell under the second part of the section, there should be proof of inconvenience or danger to the public.

Leaving of carts by the road side in the night is contrary to law ; the charge should be under the first part of section 53 (3).

THE facts appear from the judgment.

L. H. de Alwis, for the appellant.

Jansz, C.C., for the Crown.

April 18, 1921. SHAW J.—

The accused was charged with having on March 1 at Haputale halted his double bullock cart on the side of the public road, without the oxen being yoked, in such a manner as to cause inconvenience

[1] *(1912) 15 N. L. R. 323.*

and danger to the public. He has been fined Rs. 2·50 and has appealed. The charge is made under section 53 (3) of the Police Ordinance, 1865. That sub-section is divided into two parts. The first part runs as follows: "Any person who shall keep any cattle or conveyance of any kind in any road or street longer than required for loading and unloading goods, or for taking up or setting down passengers." The second part of the section is "or who shall leave any cattle or conveyance in such a manner as to cause inconvenience or danger to the public." In each of these cases the person who does what is prohibited is liable to certain penalties under the section. The present charge is clearly a charge under the second part of the sub-section. It is for leaving the conveyance in such a manner as to cause inconvenience or danger to the public. For the purpose of getting a conviction under this part of the section, it is necessary for the prosecution to establish by affirmative evidence that the conveyance was left so as to cause either inconvenience or danger to the public. The evidence in the case not only does not prove this, but expressly disproves this. It is shown that the conveyance was left by the side of the road, which, although it is the public road, leads only to the railway goods shed and to a place where petrol is stored for the use of motor cars. But there was no traffic along this road at the time when this cart was left there. There was plenty of room for vehicles to pass, although there was no danger experienced by anyone in consequence of the cart being left where it was. It is also in evidence that, for the last ten years, people have been allowed to leave their carts in this position near the goods shed, because there is no gala in the near neighbourhood. All this seems to show that inconvenience and danger to the public have not been experienced from carts being in this place. The Magistrate thinks that inconvenience or danger is necessarily caused to the public in consequence of the cart being by the side of the road. But I think it was necessary that this should have been proved, and that it cannot be assumed without proof. I think the authorities are very likely entirely right in trying to prevent this practice which has grown up of leaving carts in this place, and the Magistrate is perfectly right in saying that such a practice is contrary to law. It is contrary to the first part of the provisions of the sub-section that I have mentioned, and had the charge been properly framed against the accused under the first part of the sub-section, the conviction would have been good. The charge having been made as it is under the second part of the section, it must fail, because the evidence does not support the charge there stated, namely, that inconvenience or danger had been caused to the public. I allow the appeal, and set aside the conviction.

Appeal allowed.