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ELLIS v. STEPHENS.

P.C., Colombo, 66,576.

*Carrier's Ordinance No. 14 of 1865—"Coach"—Tram car—Permitting tram car to be used for conveying passengers for hire without obtaining a licence—Liability of the Manager of the Company to be punished under s. 16 of the Carriers' Ordinance and s. 102 of the Penal Code.*

The tram cars running on the streets of Colombo are public conveyances by land for the conveyance of passengers, and as such are "coaches" within the meaning of "The Carriers' Ordinance, 1865."

The Manager of the Company which permitted such coaches to ply for hire without obtaining a license is punishable under section 102 of the Penal Code for abetting the offence created by section 16 of the Carrier's Ordinance.

THE complaint in this prosecution was as follows:—

" 1. The Colombo Electric Tramways and all the cars, machinery, and plant appertaining thereto are the property of the United Planters' Company of Ceylon, Limited, being a Company incorporated in England and having its registered office in England.

" 2. The agents and attorneys in Ceylon of the said Company are the firm of Boustead Brothers, which consists of two partners, viz., John Melvill Boustead and Edgar Money, neither of whom is now resident in this Island.

" 3. The business of the said firm of Boustead Brothers as such agents, including the entire control and management of the said tramways, is in the hands of the first defendant, who is the general manager thereof employed and paid by the said firm of Boustead Brothers.

" 4. On the 21st day of August, 1900, at Colombo, the said United Planters' Company of Ceylon, Limited, did use and suffer and permit to be used a coach, to wit, the car No. 4 belonging to them, for the conveyance of passengers by land on hire, without obtaining a license for the same as required by the Ordinance No. 14 of 1865, and thereby committed an offence punishable under section 16 of the said Ordinance.

" 5. The defendant above-named, at the time and place last-mentioned, abetted the commission of the said offence, and thereby committed an offence punishable under the said section 16 and section 102 of the Ceylon Penal Code."

The Police Magistrate, after hearing evidence, found as follows:—

" It is proved that a tram car on 21st August last carried passengers for hire; it is also proved that it belonged to the United

Planters' Company, and that Boustead Brothers were their agents, and that accused was the manager of that firm. An objection is raised that as power H requires two of the attorneys to act, they cannot be singly prosecuted. This I do not think will hold, as each of them is criminally responsible for his own acts. Nor do I think that for the purposes of section 12 of Ordinance any reference need be made to power H, it being sufficient that accused is managing the affairs of the proprietor Company for all practical purposes.

“ On the question of whether a tram car is a coach the Supreme Court has intimated (in the appeal taken in this case against a former order made herein) that it is a coach, and I am bound to follow that ruling. ”

Accused appears to me to have abetted the offence committed by the Company of using the tram car for hire, by failing to make the necessary declaration, and at the same time taking no step to prevent the tram cars running until license had been obtained.

I convict accused of abetting on 21st August, 1900, the offence committed by the United Planters' Company of Ceylon, Limited, of using, suffering, and permitting to be used a coach, to wit, a tram car, for conveyance of passengers for hire, without obtaining a license as required by Ordinance No. 14 of 1865, and punishable under section 102 of the Ceylon Penal Code and section 16 of Ordinance No. 14 of 1865. I fine accused five rupees.

The accused appealed.

*Elliott*, for appellant.—The Ordinance No. 14 of 1865, upon which the conviction rests, does not apply, because there is another Ordinance No. 5 of 1873 specially relating to tramways. In 1865 electric tramways were not heard of. A tram car is not a coach within the meaning of Ordinance No. 14 of 1865. The 16th section, which provides for the punishment of offences created by the Ordinance, plainly limits the meaning of “ coach ” to vehicles drawn by animal power, and the 37th section expressly exempts railways from the operation of the Ordinance. A tram car is one that runs on rails, and a tramway is a railway. Hence the present case is not one which can be disposed of under the Ordinance No. 14 of 1865. It is governed by the special Ordinance No. 5 of 1873, the 17th section of which refers to tramway “ carriages ”, and the 7th section provides for the issue of licenses by the Municipal Council, but the Council has exempted the Company from taking out its license. [BOXSER, C.J.—By section 132 of the Ordinance No. 7 of 1887 the Council has no power to exempt any one from the incidence of taxation.] That point does not arise here. If the tram car is a “ coach ”, the Government

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Agent must issue a license. If a "carriage" under the 7th section of the Ordinance, No. 17 of 1873, the Municipal Council must issue a license. Such a dual control could not have been contemplated by the Legislature. The tram car is not a coach. It is a carriage running on rails, and railways do not come within the scope of the Ordinance No. 14 of 1865, and the present prosecution is illegal.

Assuming that the Roman-Dutch Law is in force in the Kandyan tramway appears in section 14 of Ordinance No. 5 of 1873, and is in accord with the English Law on the subject. If a road is owned by a private person or public company and carriages run on it over rails, it is a "railway". If the road is a public highway (as in the present case), that part of it on which the rails are laid is called a "tramway." The Colombo Electric Tramway is thus not a railway, and cannot escape the provision of the Ordinance No. 14 of 1865. The cars running on it are "coaches". The Ordinance No. 5 of 1873 refers only to the constitution and registration of Tramway Companies. Under section 7 of the Ordinance No. 17 of 1873 the Government Agent can revoke a license, and under section 15 furious driving is punishable.

*Cur. adv. vult.*

28th March, 1901. BONSER, C.J.—

The object of this appeal is to obtain a decision of this Court as to whether or not coaches which run on the tramway lines through the streets of this town of Colombo are coaches within the meaning of the Carriers' Ordinance of 1865. The definition clause gives an interpretation of the word coach, and says that "it shall include all mail coaches or other public conveyances by land for the conveyance of passengers or goods". Now, it is perfectly clear, and it cannot be disputed, that these coaches are public conveyances by land for the conveyance of passengers, and further that they come *primâ facie* within the words of the definition; but it was argued that although they come within the words of the definition, yet by the necessity of the case they were to be excluded, because, as I understand the argument, it was argued that the Legislature had dealt with these vehicles under another Ordinance—the Tramways Ordinance. The Tramways Ordinance, it was argued, dealt with them in such a way as to show that the Legislature did not regard them as coming under the Carriers' Ordinance. I have carefully gone through the Tramways Ordinance, and I can see nothing in that Ordinance inconsistent with the provisions of Ordinance No. 14 of 1865.

Then there was a further argument that section 37 expressly excluded the Carriers' Ordinance from having any operation

on these vehicles. That section provides "that nothing in this Ordinance contained shall be held to apply to the conveyance of goods or passengers by railway"; and it was contended that this tramway was a railway, and that therefore these coaches were within the exception. No doubt in a sense a tramway may be described as a railway, because these vehicles run upon rails. But in construing an Ordinance the first rule of construction is that words are to be taken in their ordinary and popular meaning, unless it is shown that they are used in some technical sense. Now, I cannot conceive that any person speaking of these tramways, running through the streets of Colombo, would ever dream of speaking of them as a railway; no one would do that. Everybody would call them tramways.

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The distinction between a railway and a tramway in popular meaning is very clear. A tramway runs along the public thoroughfares, while a railway runs along private properties and on a bed of its own, which is not used by the general public. So that I am of the opinion that the case does not come within section 37 of the Carriers' Ordinance, and that therefore the appeal must be dismissed.

I do not think that there can be any practical hardship upon the appellant such as was attempted to be made out on the part of the appellants, for it seems to me the fact that the Government Agent has to register these coaches and license them, does not invest him with any authority over them, or enable him to impose any conditions upon their users or owners. So soon as he is satisfied that the ownership is truly stated he is bound to issue his license.

