KARUNARATNA *v.* KIRA.

1903.
September 8.

P. C., Negombo, 32,598.

Vehicles—Ordinance No. 9 of 1901, s. 42 (2)—" Used for hire or reward. "

A who had contracted with B to fell and saw timber growing on B's estate, and to transport the same to and deliver it at another place for a consolidated charge at so much per cubic foot, cannot use his own carts for the fulfilment of the contract without having obtained a license for the transport.

The owner of the carts as well as the drivers are liable for the use of them for transport.

THE accused were charged with driving vehicles which carried timber without a license and thereby committing an offence punishable under section 42, sub-section 2, of the Ordinance No. 9 of 1901.

It appeared that the accused were cart drivers employed by one John Perera, who claimed the carts seized as his private property; that he had contracted with the Conservator of Forests to furnish him with Crown timber cut, sawn, and delivered at Re. 1.27 per cubic foot; that the transport was to be from Mirigankanda to Badalgama and Muniyangoda; and that his contract did not specify the charges allotted for sawing, cutting, and removing the timber.

The Police Magistrate, Mr. F. A. Wijeyesekera, held that as section 6 of the Ordinance No. 9 of 1901 provided that the owner of vehicles used for the purpose of conveying or transporting by land goods or merchandise from any place to any other place for hire or reward should apply for a license, the accused's carts ought to have been licensed as cars plying for hire, seeing that the consolidated rate of Re. 1.27 per cubic foot included transport charges payable to the accused by the Forest Department. The Magistrate sentenced each of the accused to a fine of Rs. 10.

The accused appealed. The case was argued on 2nd September, 1903.

Allan Drieberg, for appellant.—The intention of the Ordinance as seen in section 44 is to cast on common carriers only the duty of taking out a license. The contractor for whom the accused drove the carts is not a common carrier, is not one who is obliged by law to let his cart for hire (*Gibson v. Silva, Ram. 1848, p. 105*). The contractor did not give his cart on hire, nor did

1903. *September 8.*

the fact of his making a living on profit by the transport constitute such living or profit " reward " under section 6.

Macnamara *On Carriers, p. 11;* Ordinance No. 3 of 1848, section 2 (" public business "); Ordinance No. 14 of 1865, section 6 (" hire "); and Ordinance No. 17 of 1873; were referred to.

Rámanáthan, K. C., for respondent.

Cur. adv. vult.

8th September, 1903. WENDT, J.—

This appeal raises a question under the Vehicles Ordinance, 1901. One D. J. Perera has entered into a contract with the Government to fell and saw to certain dimensions timber growing in a Crown forest at a place called Mirigankanda, and to convey and deliver such timber at certain other specified places. For this he receives payment at a consolidated rate of so much per cubic foot of timber delivered. The contract does not apportion the payment among the several operations performed in connection with the timber, but the Magistrate has found that the greater portion of the payment was due in respect of the transport. For the conveyance of the timber Perera employed carts belonging to himself and exclusively used for his own business as such contractor. On 15th July, 1903, two of these carts, driven by the two appellants and laden with sawn timber, were proceeding from Mirigankanda to Negombo, where Perera had to deliver the timber, when they were seized by a headman, who charged the appellants with an offence under sub-section 2 of section 42 of the Ordinance No. 9 of 1901. The appellants were carters regularly employed by Perera to drive these carts. The Magistrate convicted them and fined them Rs. 10 each, with the alternative of a week's imprisonment.

Appellant's counsel contended that the carts in question did not require to be licensed under the Ordinance, because they were not " used for hire or reward " within the meaning of section 6. He argued first that using a cart as Perera did, for the purposes of his own business, was equivalent to using it to transport his own goods, like transporting the produce of his own estate to market for sale; and secondly, that the use contemplated by the Ordinance was use as a business. I am against both these contentions. It is not for a moment suggested that Perera carried the timber gratuitously, and although the exact sum paid for carriage cannot be ascertained, it is clear that some part—the Magistrate believes a substantial part—of the total payment is remuneration for transport. Such remuneration certainly is " reward " in the legal sense, even if it be not " hire. "

1903.
September 8.
WENDT, J.

The second contention is apparently suggested by the decision of this Court in *Gibson v. Silva* (*Ram 1848, p. 105*). But that was a decision under the Ordinance No. 3 of 1848, which (section 2) necessitated a license only in the case of carriages " used for the conveyance for hire as a public business " of goods or passengers. Those words were very soon repealed by Ordinance No. 23 of the same year, and have not been reepeated in any of the later enactments on the subject. The carts in question, then, were " used for the purpose of conveying or transporting by land goods from any place to any other place for hire or reward, " and consequently required a license.

But did the appellants use or permit or suffer the use of the carts as contemplated by section 42, sub-section (2)? The occurrence of the words " without having obtained a license therefor " seems to indicate that the offence is committed only by the owner, for it is the owner only who can " obtain a license " under sections 6 and 7. If that was the intention of the enactment, then Perera is the principal offender, but the appellants undoubtedly aided and abetted him in the commission of the offence, and under the circumstances proved are deemed themselves to have committed it (section 107, Penal Code). In view, however, of the facts that they were merely Perera's servants, and that theirs is a first offence, I think a nominal sentence will serve the ends of justice. I reduce the fine to Re. 1 in each case, with a week's imprisonment in default of payment.