

1935

Present : Soertsz A.J.

SOYSA *v.* JAMES SINGHO.

547—P. C. Colombo, 32,127.

Loadometer—Carrying goods in a lorry in excess of licensed weight—Weight tested by loadometer—Evidence of officer responsible for test—Motor Car Ordinance, No. 20 of 1927, s. 63 (1).

Where the driver of a motor lorry was charged with carrying goods in excess of the weight it was licensed to carry and the case against the accused depended upon the weight of the lorry being ascertained by means of a loadometer,—

Held, that, after a loadometer has been used for the purpose, a responsible officer should test its accuracy and depose to that fact, if the prosecution intends to rely on the weight so ascertained.

A PPEAL from a conviction by the Police Magistrate of Colombo.

L. A. Rajapaksa (with him *N. M. de Silva*), for accused, appellant.

Cur. adv. vult.

October 10, 1935. SOERTSZ A.J.—

The accused in this case was charged under section 63 (1) of Ordinance No. 20 of 1927, with having carried 616 lb. of goods in excess of the weight the lorry he was the driver of had been licensed to carry. He was found guilty by the Magistrate and fined Rs. 20; in default, three weeks' rigorous imprisonment.

The appeal is taken with the leave of the Magistrate. The case against the accused depends upon a weight ascertained by a new device called a "loadometer" which is said to enable one to ascertain the full weight of the laden lorry by weighing each of its wheels in turn and adding the results together. A device such as this is a very desirable thing in a mechanical age such as ours is, but it is necessary that these devices should be accurate before persons can be brought within the reach of the criminal law by the results they yield. In this particular case, Inspector Zoysa, who used the loadometer to ascertain the weight of the lorry

says, "I cannot say the condition of this loadometer. The loadometer was tested some time back. I think the loadometer was accurate". That is all the evidence we have with regard to the efficiency of the loadometer. It is desirable that, if the prosecution intends to rely upon results ascertained in this manner, soon after a loadometer has been used for the purpose in question, some responsible person acquainted with its mechanism should test it to see that it is accurate at the crucial time, and he should, thereafter, be called as a witness to depose to that fact.

My confidence in this loadometer wavers somewhat when I find that it is conceded by the prosecution witness that he would not charge an accused person unless the overload was in the neighbourhood of 5 cwt. I do not know whether when he said this he meant to indicate that that was a possible margin of error. If that is what he meant, it will, I think, be putting too fine a point upon this case, to say that the accused brought himself within the law because the weight registered when this machine was used on the occasion in question exceeded 5 cwt. by only 2 qrs. In the circumstances I think, to say the least, there is a substantial doubt with regard to the guilt of the accused in the case, to the benefit of which he is entitled. I, therefore, set aside the conviction and acquit him.

Set aside.

