

1941

Present : Moseley S.P.J.

CHAIRMAN, URBAN COUNCIL, JAFFNA v. RASENDRAM.

532—M.C. Jaffna, 15,742.

Lorry—Possessing a lorry without a licence—Purchase of lorry before the expiration of licence—Failure to renew licence—Licence in force—Motor Car Ordinance, No. 45 of 1938, s. 29 (1).

Where a person, who purchased a motor lorry on December 10, 1940, but who did not obtain the certificate of registration till January 6, 1941, was charged under section 29 (1) of the Motor Car Ordinance, with possessing a motor lorry on or about December 10, 1940, for which a licence was not in force,—

Held, that the licence issued for the lorry was in force at that date and that the accused had not contravened the provisions of the section.

The omission to have applied for a new licence under section 58B (1) has no more effect than that of preventing the use of the lorry.

A PPEAL from a conviction by the Magistrate of Jaffna.

E. H. T. Gunasekera, C.C., for A.-G., as *amicus curiae*.

N. Nadarasa, for the respondent.

October 6, 1941. MOSELEY S.P.J.—

This appeal came up for hearing on September 9, 1941, when there was no appearance for the accused-appellant. Counsel for the respondent put the case very fairly but, in the interests of the appellant on whose behalf I felt something could be said, I invited Crown Counsel to appear as *amicus curiae*. The appeal has accordingly been reargued to-day.

The appellant was convicted of possessing on or about December 10, 1940, a motor lorry for which a licence was not in force, in breach of

section 29 (1) of the Motor Car Ordinance, No. 45 of 1938. He was called upon to pay a fine of Rs. 70 which is, in fact, the full annual duty in respect of the vehicle in question.

It appears that on December 10 the appellant purchased a lorry from one Muniah Pillai who had obtained a licence for the year 1940. The necessary notices regarding change of possession were given by the vendor and the purchaser and the appellant applied without delay to be registered as owner of the lorry. The certificate of registration of ownership was issued on January 6, 1941, but the appellant admits that he became the owner on December 10, 1940. The section under which he was charged provides by sub-section (1) that no person shall possess or use a motor car, which expression here includes motor lorry, for which a licence is not in force. There was no suggestion that the appellant used the lorry. The essence of the alleged offence is mere possession. The question for decision is whether or not a licence was in force for this particular vehicle.

Counsel for the respondent argued that a licence is personal to the holder thereof. This contention would seem to be negatived by the very wording of section 29 (1) and the view is supported by a reference to form 19 which is the form appropriate to such a vehicle in which the following words follow: "Licensed to carry goods to the maximum weight of" Further, the licence is expressed therein to commence on and to expire on December 31 next. There is, however, a qualification that the licence is conditional on the lorry remaining in the possession of the present registered owner. Crown Counsel, however, argued that the qualification to which I have referred has merely the effect of suspending the operation of the licence. He referred me to section 6 of Ordinance No. 15 of 1939, which draws a distinction between the date of commencement of an Ordinance and the date of operation, and to section 2 of Cap. 2 of the Legislative Enactments which defines "commencement" as the day on which an Ordinance comes into force. An example of such a position may be found in the case of this very Ordinance the provisions of which are now under consideration. Ordinance No. 45 of 1938 commences on October 3, 1938, its date of operation is July 1, 1939. It seems to me that this distinction, that is to say, between the continuation in force of the licence and its operation, may well be drawn.

Section 18 (2) (b) does indeed provide for the use of a lorry on a change of possession which appears to indicate that the law contemplates the remaining in force of a suspended licence. Furthermore, section 20 (2) which applies to a motor car, as opposed to a lorry, provides that the Commissioner shall in certain circumstances make the necessary alterations in the licence *if it is still in force* thus providing for a state of things consistent with Crown Counsel's arguments. Again, section 58B (2) (a) clearly contemplates the remaining in force of a licence until cancelled, subject of course to expiration.

It was open to the appellant under the provisions of section 58B (1) to have applied for a new licence. It seems to me that his omission to have followed this course, which is permissive only, has no more

effect than that of preventing the use of the lorry. The provisions of section 30 (1) (b) which enables a registered owner to give notice of non-user would seem only to apply to the case of a vehicle in respect of which a licence is not in force.

It seems to me for the reasons which I have set out, that a licence was in force and that the appellant has not contravened the provisions of section 29 (1) of the Ordinance. I would, therefore, allow the appeal and set aside the conviction and sentence.

Set aside.
