

[IN REVISION.]

Present : Schneider J.

STEWART *v.* PACKIR SAIBO.

P. C. Badulla—6,110.

1925.

*Motor by-law—Rash and negligent driving—Conviction of driver—
Charge against owner—Vehicles Ordinance, No. 4 of 1916, s. 22.*

Where, after the conviction of the driver of a motor car for negligent driving, the owner, who was not present at the time, was charged with the same offence under by-law 32 framed under section 22 (1) (h) of the Vehicles Ordinance.

Held, that the by-law was *ultra vires* in so far as it seeks to make the owner liable equally with the driver for an offence committed by the driver in the absence of the owner.

APPPLICATION by the Attorney-General to revise the proceedings in this case in which the accused, the owner of a motor car, the driver of which was charged and convicted under by-law 32 framed under section 22 of the Vehicles Ordinance with having driven the car in a negligent manner, was himself charged with the same offence under the same provisions of the law, although he was not present at the time. The accused pleaded guilty, and was fined Re. 1.

J. E. M. Obeyesekere, C.C., in support.

1925.

June 5, 1925. SCHNEIDER J.—

*Stewart v.
Packir Saibo*

This is an appeal by the Attorney-General. The accused is the owner of a motor car, the driver of which was charged and convicted under by-law 32 of the by-laws framed under section 22 of the Vehicles Ordinance, No. 4 of 1916,¹ with having driven his car in a negligent manner. The accused was not in the car at the time, but when he was charged in this case with the same offence under the same provision of the law he pleaded guilty, and was sentenced to pay a fine of Re. 1. As no appeal was competent from this sentence, the proceedings are brought up in revision. The Attorney-General's submission is that the reference to "owner" in the by-law in question is *ultra vires*. I would uphold this submission. The by-law in question could only have been framed under section 22 (1) (h) which enacts that "By-laws may give such other directions with regard to the driving and management of such vehicles as may appear necessary or conducive to the public safety and convenience." Now, an owner who was not in the vehicle at the time of the commission of the offence by the driver cannot be regarded as being concerned in any way with the driving and management. Therefore this by-law is *ultra vires* in so far as it seeks to make the owner liable equally with the driver for an offence committed by the driver in the absence of the owner.

I accordingly set aside the conviction and acquit the accused.

Set aside.

