

1937

*Present : Soertsz J.*PERERA *v.* FERNANDO.95—*P. C. Negombo, 16,402*

Motor car—Halting car by the side of road—No obstruction—Obstruction likely owing to narrow road—No offence—Ordinance No. 20 of 1927, s. 52 (1).

Where a person halts his car on the left edge of a road in such a position that it does not obstruct traffic the mere fact that obstruction is likely to be caused in consequence of the road being narrow does not render him liable under section 52 (1) of the Motor Car Ordinance.

Where a car which is not in motion is placed either (a) as close to the side of the road as possible or (b) in such position as may be indicated by an officer, or (c) in such position as indicated by a properly exhibited notice, a driver acts within the law unless in placing the car by the edge of the road or in the position indicated he places it in such a position as to obstruct traffic or as to be likely to obstruct traffic.

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

J. R. Jayawardene, for accused, appellant.

D. Jansze, C.C., for complainant, respondent.

Cur. adv. vult.

May 14, 1937. SOERTSZ J.—

This appeal is concerned purely with a question of interpretation, and relates to section 52 (1) of the Motor Car Ordinance, No. 20 of 1927. There is no controversy in regard to the relevant facts. It is admitted that the car was placed "on the left edge of the road", and that the accused, who was the driver of the car, had gone into his employer's shop by the side of which the car had been halted, to fetch some parcels.

The case of the prosecuting sergeant is that on finding the car halted by "the edge of the road" he sounded the horn; the accused then came out of the boutique. The sergeant took down his name and address and charged him with obstruction because the road is a busy one and is narrow at this point.

The sergeant adds, "I cannot say that anyone was actually obstructed by the accused's car, but it was likely to obstruct". The sergeant did not indicate to the accused that he should place the car in any particular position, nor was there any notice exhibited requiring him to do so.

Now section 52 (1) is in these terms—"A motor car when not in motion shall be placed as close to the side of the road as possible, or in such position as may be indicated by any police officer or headman or by notice exhibited by the licensing authority and shall not be placed or allowed to remain in *such a position* as to obstruct or to be likely to obstruct traffic". My interpretation of this is that when a car is not in motion it must be placed in one of three ways: either (a) as close to the side of the road as possible, or (b) in such position as may be indicated by an officer, or (c) in such position as indicated by a properly exhibited notice; and that if a driver acts in any one of these ways he is within the law, unless in placing the car by the edge of the road or in the position indicated, he places it *in such a position* as to obstruct or to be likely to obstruct traffic. For instance, if he places his car so that it is the rear part of the car that is placed as close to the road as possible, while the whole car presents itself, say in a right angular position, to the road, and thereby causes or is likely to cause obstruction to traffic. I am unable to accept the submission made by Crown Counsel that the section is wide enough to render liable a person who places his car as close to the side of the road as possible, and parallel to it, but none the less obstruction is likely to be caused in consequence of the road being a narrow one. My reading of the section is that a person is exempt from the operation of the section if he places his car in any of the ways indicated and becomes liable only if in so placing it he takes up a position that obstructs or is likely to obstruct. The other reading must inevitably lead to the result that on some roads, namely, those which an officer considers narrow and busy no cars can be placed alongside of them at all. If that was the intention of the legislature, it was easy to find words to express it clearly.

In my opinion the conviction of the accused is wrong. I set it aside and acquit him

Set aside.

