

1936

*Present : Soertsz A.J.*KULATUNGA *v.* SIMON136—*M. C. Colombo, 14,100.*

Motor omnibus—Setting down a passenger at a place other than an authorized halting place—Particulars of charge—Passenger alighting when the bus slowed down—No offence—Motor Car Ordinance, No. 20 of 1927, schedule 4, s. 4.

Where the accused was charged from the summons which stated that he "being the driver of a bus set down a passenger out of a halting place and thereby committed an offence under section 84 of Ordinance No. 20 of 1927,—

Held; that the charge was defective in that it did not state that the accused was acting in breach of section 4 of Schedule 4 of Ordinance No. 20 of 1927, which set out the particulars of the offence.

Held, further, that, where a passenger alighted from an omnibus when it slowed down, the driver is not guilty of the offence of setting down a passenger at a place other than an authorized stopping place.

A PPEAL from a conviction by the Municipal Court of Colombo.

C. T. Olegasegeram (with him *Shelton de Silva*), for appellant.

Cur. adv. vult.

May 15, 1936. SOERTSZ A.J.—

This is another case from the Municipal Court of Colombo, in which the charge made against the accused is bad. The accused was charged from the summons which stated that he "being the driver of bus J 23 set down a passenger *out* of a halting place and thereby committed an offence punishable under section 84 of Ordinance No. 20 of 1927". Now, section 84 is the general penal section. There is no reference in the summons to the provisions of law which makes it an offence to set down a passenger at a place other than an authorized stopping place. I find from the report made to the Court by the prosecuting officer that it is alleged that the accused was acting "in breach of section 4, schedule 4 of Ordinance No. 20 of 1927, and published in *Government Gazette* No. 7,902 of January, 1932". That section is as follows:—"Where in an urban area any notice is exhibited by a licensing authority indicating a stopping place or public stand for omnibuses, which has been provided or allotted for stopping or standing of omnibuses, no passengers may be taken up or set down from an omnibus in the urban area except at such stopping place or public stand". If I consider this case on the supposition that there was a reference to this section in the charge, I am still unable to sustain the conviction for there is no evidence to show that the accused set down a passenger in an unauthorized manner. Police Sergeant Kulatunga says, "I saw bus J 23 coming It slowed opposite the former Eastern Garage and a passenger got down from the front seat Passenger got down as bus was turning round the bend". P. C. Badoordeen says, "I saw bus J 23 coming The driver jammed his brakes. We looked to see and saw a gentleman getting off the front seat"

This evidence is consistent with the driver having slowed down in order to take the bend and the passenger taking the opportunity to alight. It is insufficient for establishing a voluntary setting down of the passenger by the driver.

For these reasons, I set aside the conviction and acquit the accused.

Set aside.
