

1941

*Present : de Kretser J.***ATTORNEY-GENERAL v. LIVERIS.***294—M. C. Galle, 27,228.*

*Motor bus—No application for licence—Cancellation of registration—Conviction for failure to take out licence—Motor Car Ordinance, No. 45 of 1938, s. 160 (1).*

The accused who had not taken out a licence for his motor bus for the year 1940, had the registration of his bus cancelled in April, 1940, on the ground that it was permanently unserviceable.

*Held* (in a charge against him under section 29 (1) of the Motor Car Ordinance) that the amount recoverable under section 160 (1) is the amount of duty which at the date of the conviction is payable for the period for which a licence may be issued.

**A** PPEAL from an order of the Municipal Magistrate, Galle.

O. L. de Kretzer (Jr.), C.C., for the Attorney-General, appellant.

No appearance for respondent.

*Cur. adv. vult.*

June 17, 1951. DE KRETZER J—.

This is an appeal by the Attorney-General. The respondent was the registered owner of a motor bus and had failed to take out a licence for the year 1940. By April 27, 1940, the registration of the motor bus had been cancelled. That is the evidence accepted in the Magistrate's Court and it is borne out by the document, D 2, which refers to an application dated March 20, 1940, to have the registration cancelled. It was cancelled on the understanding that the vehicle had been rendered permanently unserviceable or destroyed and that it would never be used on the road again.

Having failed to take out his licence, the respondent was prosecuted under section 29 (1) of the Motor Car Ordinance, No. 45 of 1938. He admitted liability to pay the licensing fee up to April 27. The Magistrate purporting to guide himself by the decision of this Court in M. C. Galle, No. 3,602, decided on December 2, 1940, fined the accused Rs. 60 and did not proceed in terms of section 160 (1) to order the recovery of the amount stated in the statutory certificate which had been filed.

Judging from what the Magistrate had earlier said, it is clear, I think, that he did not intend to punish the accused, except nominally, and that he proposed to recover only the licensing fee for the period commencing on January 1, and ending on April 27. He said, "I find the accused technically guilty but I do not propose to levy a fine more than one-third the amount or even levy a penalty". Assuming that his order was otherwise correct, what he should have done was to fine the accused Rs. 3.30 and to order that a sum of Rs. 56.70 be recovered from the accused.

It is, however, argued for the appellant that the Magistrate had no option but to order that a sum of Rs. 170 appearing in the certificate issued by the licensing authority should be recovered. This raises the question whether the certificate is of such binding force that the Magistrate cannot question it but must automatically give effect to it when he convicts a person under section 29 (1) of the Ordinance.

The section clearly contemplates the case of the ordinary defaulter who remains the registered owner of the car and is liable therefore to pay the full year's duty. In such a case the certificate would state the amount due for that particular vehicle and the Magistrate would only be the channel through which the duty is recovered.

The circumstances of the present case, however, are not ordinary. The Magistrate had before him evidence that the registration of the motor bus had been cancelled on the ground that it was permanently unserviceable. He had also before him the provisions of section 36 which

state that the holder of a licence, on surrendering his licence for cancellation, would be entitled to a refund of a proportionate part of the licence duty. Of course in this case there was no licence to surrender.

The principle of the Ordinance seems to be that the registered owner of a motor vehicle should pay the licence duty in advance, unless he had taken certain steps to have himself exempted from that obligation, but that he should not pay if his motor vehicle was unserviceable or if he surrendered his licence for cancellation. The facts disclosed in this case do not come within the purview of any of the sections of the Ordinance. It would be exceedingly harsh if the licensing authority levied the amount due for the whole year and refused to make a refund because it was not a case of the holder of a licence surrendering his licence, and the Magistrate would be violating natural principles of justice if he interpreted the provisions of section 160 (1) literally.

Had the accused taken out a licence he would naturally have surrendered it for cancellation on April 27. Is he to be penalized for not taking out a licence by having to pay the duty for the whole year? It seems to me that when the proper authority cancelled the registration of the motor bus the licensing authority, in the peculiar circumstances of this case, should have considered that constructively the accused had surrendered his licence and that while therefore the accused was primarily liable to pay Rs. 170 the licensing authority owed it to him to refund eight-twelfths of that amount less Rs. 5. Section 160 (3) requires that when the duty has been recovered the licensing authority shall issue a licence for the motor car in like manner as if the application for such licence had been made under part 5. Here we have a clear indication that section 160 (1) only contemplates a case where it is possible to issue a licence. In the present case the licensing authority could not issue a licence for a car the registration of which had been cancelled. There is no statutory duty laid on the licensing authority to issue a certificate but there is a statutory duty imposed on him to issue a licence when the duty is recovered. If he cannot perform the duty laid upon him, then he should not produce a certificate, and if he does produce a certificate and the Court sees that he ought not to have produced it, it will also be aware of the fact that the provisions of section 160 (1) do not apply to these circumstances and that there is no statutory duty placed on the Court to recover what is not due.

I think that when in section 160 (1) the words "would have been payable" were used, the Legislature intended to say the amount which would have been payable and is still payable, and that the proper construction to give to these words is "the amount of the duty which at the date of conviction is payable", i.e., not merely for the period prior to the conviction but for the period for which a licence may be issued.

I therefore set aside the sentence passed by the Magistrate and, giving effect to his intentions, direct that the accused be fined Rs. 3.30 and ordered to pay Rs. 56.70, the duty due up to April 27, 1940.

*Set aside.*