Present: Jayewardene A.J.

1926.

SERGEANT HOOPER *v.* BASNAYAKE.

468—M. C. Colombo, 3,076.

Vehicles Ordinance, No. 4 of 1916—By-law made under section 22—Owners' liability for non-compliance with by-law.

Where a motor car not fitted with two independent brakes in good working order, as required by by-law 18 (10), was used on a public thoroughfare,

Held, that the owner of the car was guilty of an offence, irrespective of the liability of the driver.

APPEAL from an acquittal by the Municipal Court of Colombo.

Brito-Muttunayagam, C.C., for Crown, appellant.

R. L. Pereira, for accused, respondent.

October 5, 1926. JAYEWARDENE A.J.—

This is an appeal by the Attorney-General against an acquittal. The accused, who is the owner of motor omnibus No. C 6088, was charged with having failed to have two independent brakes in good working order in breach of section 18 (10) of the Motor by-laws, an offence punishable under section 34 of the same by-laws.

The learned Municipal Magistrate found that the brakes were ineffective, but held that the evidence fell far short of the kind of proof that was necessary to establish a charge against the owner of the vehicle under the by-law. He thought that the defects in question, which in his opinion were temporary and could have been remedied by mere adjustment, might have been sufficient to render the driver liable under the section, but that before the owner can be convicted there should be a permanent and mechanical defect in the brakes. He therefore acquitted the accused.

The appeal is based on the ground that the by-law in question leaves no room for the distinction drawn by the learned Magistrate, and that the owner and the driver are liable in the same circumstances. I think this contention is sound and is entitled to succeed.

Section 18 of the by-laws has been framed under section 22 of the Vehicles Ordinance, No. 4 of 1916, which empowers the Governor in Executive Council for the whole of Ceylon or any

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part thereof without prejudice to his powers under section 18 of the Ordinance to make, &c., special by-laws regulating and controlling the use of mechanically propelled vehicles, and for protecting persons and property from danger or damage from the use of such vehicles, and generally for carrying out the purposes and objects of this Ordinance; and such by-laws may *inter alia* "impose such restrictions upon the weight and construction and use of mechanically propelled vehicles as may appear necessary to protect public roads, bridges, culverts, and thoroughfares and streets from undue damage and to ensure the safety of the public."

And section 18 enacts that "no motor car shall be used on any public thoroughfare unless the conditions hereinafter set forth are satisfied, and if any motor car is so used the owner and driver of such motor car shall be guilty of an offence under these by-laws."

By-law 18 (10) runs as follows:—

> "The motor car shall have two independent brakes in good working order and of such efficiency that the application of either shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the motor car as if such wheels were so held. Provided that in the case of a motor car having less than four wheels, this condition shall apply as if instead of two wheels on the same axle, one wheel were therein referred to."

In my opinion the effect of section 18 (10) is to make the owner and the driver of a motor car which does not have two independent brakes in good working order and of the efficiency required by the section, guilty of an offence under section 18. It was not seriously contended that the owner would not be liable for failure to comply with the requirements of by-law 18 (10). There is nothing unreasonable in such a law, and our legislative enactments contain numerous provisions which expressly or impliedly render the master criminally liable for the acts and omissions of his servants. But it was contended that both the owner and the driver of a motor car or omnibus could not be convicted in respect of the same omission. It was stated that the driver of this omnibus has also been charged in respect of the same offence. His case is not before me. If there is any substance in the contention the objection in question might be raised at the trial of the case against the driver. In the present case the objection cannot, in my opinion, be sustained.

I am unable to appreciate the distinction which the learned Magistrate draws between defects for which the owner would be responsible and the defects for which the driver would be responsible. By-law 18 (10) itself makes no such distinction, and to give

effect to any such qualification of the rule would be not to construe the section, but to introduce a distinction which the rule-making authority has not thought fit to introduce. The duty of the court is to expound the law as it stands according to the real sense of the words used.

My attention was drawn to the case of *Stewart v. Packir Saibo*.[1] In that case after the conviction of the driver of a motor car for rash and negligent driving the owner, who was not present at the time the offence was committed, was charged with the same offence under by-law 32 framed under section 22 (1) (*h*) of the Vehicles Ordinance. This Court there held, on an application for revision at the instance of the Attorney-General, that the by-law was *ultra vires* in so far as it sought to make the owner liable equally with the driver for an offence committed by the driver in the absence of the owner. That case dealt with an entirely different state of facts and does not bind me in the decision of this case.

In the other case referred to *Embuldeniya v. Palipane* [2] the Court was construing a by-law passed under section 18 of the Vehicles Ordinance. The decision in that case has no bearing on the point raised here, but I would point out that in the course of his judgment in that case the learned Judge referred to the case of *The Provincial Motor Car Company, Ltd. v. Dunning* [3] in which it was held that the owner of a motor cab can be guilty of aiding and abetting the driver in using a motor cab in contravention of a by-law requiring certain fittings for the lighting apparatus.

Section 18 of the by-laws makes the owner expressly liable for failure to observe the conditions set forth in sub-sections (1)-(14) of section 18. In my opinion, therefore, the learned Magistrate was in error in drawing the distinction which he drew and in acquitting the accused. The circumstances which he points out are circumstances which may be taken into consideration in passing sentence.

I find that the learned Magistrate acquitted the accused at the conclusion of the case for the prosecution. I would, therefore, set aside the order of acquittal and send the case back for the Magistrate to hear the defence.

Set aside.

[1] *(1925) 27 N. L. R. 25.*

[2] *(1926) 7 C. L. Rec. 103.*

[3] *(1909) 2 K. B. 599.*