

1956

*Present : Gunasekara, J.*

I. P. JOHN, Appellant, and POLICE SERGEANT,  
GALEWELA, Respondent

*S. C. 396—M. C. Dambulla, 7,270*

*Lorry—Use of it outside area of operation specified in licence—Elements of offence—  
Motor Traffic Act, No. 14 of 1951, ss. 86 (3), 186.*

When a licence is issued to use within a specified area a lorry that will usually be kept at a place outside that area, driving the lorry unladen between the place where it is usually kept and the area of operation, for the purposes of its authorised use in that area, is not an offence within the meaning of section 186 of the Motor Traffic Act.

<sup>1</sup> (1955) 57 N. L. R. 17.

**A**PPPEAL from a judgment of the Magistrate's Court, Dambulla.

*C. D. S. Siriwardene*, for the accused-appellant.

*V. S. A. Pullenayegum*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

August 27, 1956. GUNASEKARA, J.—

This is an appeal by the driver of a lorry against a conviction under section 186 of the Motor Traffic Act, No. 14 of 1951, for using the lorry on a highway outside the area of operation specified in the revenue licence, which was the Anuradhapura and Polonnaruwa districts. The evidence against him was that a police officer found the lorry being driven by him at Makulugaswewa, a place outside this area.

The licence states that the lorry "will usually be kept" at Halpe, Mirigama, which is outside the Anuradhapura and Polonnaruwa districts. The place where the lorry was found lies between these districts and Mirigama, and the lorry was empty at the time. It is contended for the appellant that in view of these circumstances the prosecution has failed to prove that it was being "used" within the meaning of section 186.

At the time of the alleged offence the owner of the lorry held a private carrier's permit, granted by the Commissioner of Motor Traffic under Part V of the Act, which authorized him to use the lorry in the area of operation for the carriage of goods in connection with his business as a "contractor and supplier of building materials and cadjans". It described his "principal place of business" as Halpe, Mirigama, and the "area of operation" as the Anuradhapura and Polonnaruwa districts. Thus, the carrier's permit, read in the light of the revenue licence, purported to authorize the use of the lorry for the carriage of goods in the area of operation specified in the permit, although the lorry would usually be kept at Mirigama, outside that area.

The discretion to issue carrier's permits that is vested by the Act in the Commissioner is not fettered by any requirement that a lorry specified in a permit may not be one that will usually be kept at a place outside the area of operation. Indeed, the Act contemplates a discretion in the Commissioner to include in a permit authority even to carry goods outside that area; for section 86 (3) requires an applicant for a permit to specify "the place or places, if any, outside the proposed area of operation between or from or to which it is proposed to carry goods".

A permit to use within a specified area a lorry that will usually be kept at a place outside it must be taken to authorize the driving of the lorry, unladen, between that place and the area of operation for the purposes of its authorized use in the area of operation; for whenever anything is authorized and it is found impossible to do that thing unless

something else not authorized in express terms be also done, then that something else will be supplied by necessary intendment (*Fenton v. Hampton*<sup>1</sup>). It follows that section 186 must be so construed as not to apply to a lorry to which such a permit relates, when the lorry is driven unladen between the place where it is usually kept and the area of operation, for the purposes of its authorized use in that area. There is nothing in the evidence in this case to exclude the possibility that when the lorry in question was found at Makulugaswewa it was being driven in accordance with the authority granted by the permit. The appeal must therefore be allowed.

Another fatal defect in the case for the prosecution is that there is no evidence that the place where the lorry is alleged to have been used was a highway. I do not base my decision on this ground, however, because the point was not argued at the hearing of the appeal.

The conviction of the appellant and the sentence passed on him are set aside and he is acquitted.

*Appeal allowed.*

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