

1927.

Present: Schneider J.

RATAMAHATMAYA v. EULIN PERERA.

424—P. C. Kegalla, 7,855.

Employment of children—Industrial undertaking—Transport of passengers by road—Ordinance No. 6 of 1923, s. 4 (a).

Where a boy was employed in a motor omnibus to attract passengers by announcing the destination of the bus.—

Held. that it amounted to employment in an industrial undertaking within the meaning of section 4 (7) (a) of the Employment of Young Persons and Children Ordinance, No. 6 of 1923.

APPEAL from an acquittal by the Police Magistrate of Kegalla.

Obeyesekere, Deputy Solicitor-General, for respondent.

J. S. Jayewardene, for accused, appellant

September 26, 1927. SCHNEIDER J.—

This is an appeal by the complainant with the sanction of the Solicitor-General against the acquittal of the accused-respondent. He was charged with having employed a "child" in an "industrial undertaking," viz., in the transport of passengers by road in an omnibus and with having thereby committed an offence punishable under section 4 (7) (a) of the Employment of Young Persons and Children Ordinance, No. 6 of 1923. The "child" is a boy of 13 years of age and therefore comes within the definition of "child"

in the Ordinance. The evidence proved expressly or by implication the following facts:—The respondent was the owner of the omnibus which carried passengers by road from one point to another. The services of the “child” were engaged by a person who is described as the “manager” of the omnibus in question. I think he would be more accurately described as the conductor. The duty of the “child” consisted in riding on the omnibus and in crying out, as the omnibus plied along the road, the name of the place which was its destination. He was paid a small sum of money per day. The respondent did not either engage the “child” or pay him any remuneration personally. But, I would regard the evidence as proving that he is the person who employed the “child” within the meaning of section 4 (7) (a) of the Ordinance, for the reason that the manager or conductor must be assumed to have had the authority of the respondent to engage persons who were necessary to do the work done by the “child” and others for the purpose of the undertaking, and that his acts in engaging and paying the “child” were therefore the acts of the respondent. The Magistrate accepted those to be the facts. The part of section 4 (7) (a) material to this case is the following:—

“If any person employs a child in any industrial undertaking in contravention of this Ordinance, he shall be liable for each offence, &c.”

The employment of the “child” if in an industrial undertaking was in contravention of the provision in section 4 (1) of the Ordinance which forbids a child to be employed in any industrial undertaking.

Section 2 of the Ordinance interprets “industrial undertaking” as having the meaning assigned thereto in the convention set out in Part 1 of the Schedule to the Ordinance. I need consider only Part I., Article I, (d) of the schedule. It enacts that the term “industrial undertaking” includes particularly transport of passengers by road. The learned Magistrate held that what the “child” was employed for doing did not consist in the transport of passengers.

The learned Deputy Solicitor-General who appeared in support of the appeal submitted that the object of the legislation under consideration was not only the physical health of the child, but also its education in a school. The age limit of 14 years pointed to that, as that is the limit of age for compulsory education in a school. Mr. Jayewardene submitted to the contrary that the sole object was the physical health of the child.

For the decision of this appeal, I do not think it necessary to speculate what was the intention behind the legislation. The Ordinance expressly states that the Ordinance was intended to give effect to certain conventions of an international character which are to be found in the schedule to the Ordinance. The appeal only calls

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for an application of the clear words of the Ordinance to a given set of facts. The question for determination is whether the "child" was employed in an undertaking for the transport of passengers by road. In my opinion he was so employed. The transport of the passengers was effected by the omnibus. To run the omnibus for that purpose a driver was essential, and it would appear that a conductor, presumably to collect the fares, &c., and a boy to attract the passengers by announcing the destination, were necessary. These last two persons, I take it, were necessary for the successful or profitable working of the undertaking. If the boy was not necessary, it was not likely the manager or conductor would have incurred the expense of employing him. It may well be that the services of the boy were not essential for the conduct of the undertaking in the same sense as the services of the driver, but by those who ran the business he was regarded as a necessity, and the evidence is that he did take a part in the actual running of the omnibus and the transport of the passengers. If the boy had been employed as a clerk to keep the accounts of the undertaking, and instead of having to travel on the omnibus he sat in some office and wrote out the accounts, I was asked whether, in that event, the boy could be regarded as employed in the transport of passengers by road. That is not the question for my decision. I therefore express no opinion about it. From what I have already stated it is apparent that the "child" was employed in the transport of passengers. I therefore set aside the order of the Magistrate and convict the respondent of the charge of having employed a "child," in an industrial undertaking in contravention of the Ordinance. The case is, I believe, the first of its kind. Though every person is presumed to know the law the respondent had not the remotest idea that he was acting contrary to any law in employing the boy. His offence is therefore of a purely technical nature, and a nominal fine will meet the ends of justice.

I sentence him to pay a fine of Re. 1, in default to undergo one day's simple imprisonment.

Set aside.

