

1933

Present : Macdonell C.J.

SUB-INSPECTOR OF POLICE, CHILAW *v.* CROOS.

307—*P. C. Chilaw, 38,880.*

Motor Car—Defective brakes—Liability of owner—Onus of proof—Ordinance No. 20 of 1927, s. 80 (3).

Where, in a charge under section 80 (3) of the Motor Car Ordinance against the absent owner of a motor car, it is established that something was done or omitted in connection with the car in contravention of any provision of the Ordinance, the onus is on the owner to satisfy the Court that the offence was committed without his consent and was not due to any act or omission on his part and he had taken all reasonable precautions to prevent the offence.

A PPEAL from a conviction by the Police Magistrate of Chilaw.

J. R. Jayewardena, for accused, appellant.

May 30, 1933. MACDONELL C.J.—

In this case it does not seem disputed that the car in respect of the case was being driven that day when it was not in a fit condition to be driven. For instance its brakes seem to have been wholly defective. The accused, who is the owner of the car, was not present either when the car was being driven or when the Examiner of Motor Cars examined the car while it was still hot after being driven, and it is urged that in this, a prosecution under section 80, sub-section (3), and section 82 of Ordinance No. 20 of 1927, the onus is on the prosecution throughout. I am afraid I do not so read section 80, sub-section (3). The sub-section speaks of something "done or omitted in connection with a motor car in contravention of the provisions of the Ordinance". That something "done or omitted" must clearly be proved by the prosecution, but the sub-section then goes on to say that the "owner of a motor car shall also be guilty of an offence, if absent, unless the offence was committed without his consent and was not due to any act or omission on his part and he had taken all reasonable

precautions to prevent the offence". As I read the section, if the something done or omitted has been proved, the prosecution has discharged the onus that lies upon it, and it is then for the owner if he was absent at the time of the something done or omitted, to satisfy the Court that the offence was committed without his consent, that it was not due to any act or omission on his part, and that he had taken all reasonable precautions to prevent the contravention. That seems to me to be the normal interpretation of this section. In the present case no evidence was led to show that the offence was committed without the accused's consent, and that it was not due to any act or omission on his part, and that he had taken all reasonable precautions.

Upon these facts, I think the conviction is correct and the appeal must be dismissed.

Affirmed.

