

*Present: Dalton J.*

1926.

DE JONG *v.* KANDAPPA.

419—*M. C. Colombo, 1,380*

*Vehicles Ordinance—Order for payment of hire—No appeal—Ordinance No. 4 of 1916, s. 49.*

No appeal lies from an order made in a proceeding under section 49 of the Vehicles Ordinance to recover a sum of money due for hire of a vehicle.

**A** PPEAL from an order made by the Municipal Magistrate of Colombo under section 49 of the Vehicles Ordinance for the payment of a sum of money as hire for a motor car due by the appellant to the complainant.

*Weerasinghe*, for appellant.

*Garvin*, for respondent.

September 14, 1926. DALTON J.—

A complaint was lodged by the respondent to this appeal against the appellant that the latter, who is termed the "accused," omitted to pay to him or to his driver the sum of Rs. 58.10 motor car hire, and

1926.  
DALTON J.  
Do Jong v.  
Kandappa

that he " did thereby commit an offence punishable under section 49. Ordinance No. 4 of 1916 (the Vehicles Ordinance)." In the words of the record of the Municipal Magistrate, in whose Court the complaint was heard, the verdict was " Guilty, " and the sentence as follows:—

" I order the accused to pay the sum of Rs. 58.10 and costs, which latter I fix at Rs. 40.48."

From that decision, the appellant, who in his petition of appeal calls himself " the accused, " appeals, but on the appeal coming on for hearing, objection was taken for the respondent that there is no appeal from this decision.

The section under which these proceedings are taken is in the following terms:—

49. " If any person shall refuse or omit to pay to the proprietor or other person authorized to recover the same (the sum justly due for the hire of a vehicle) or shall deface or in any manner injure any such vehicle, it shall be lawful for the Police Court or Municipal Court having jurisdiction in the place in which any of the acts aforesaid were committed, upon complaint of the proprietor and summary proof of the facts, to award reasonable satisfaction to the party so complaining for his fare or for his damages and costs, and also reasonable compensation for loss of time in attending to make and establish such complaint; and upon the neglect or refusal of such defaulter or offender to pay the same, it shall be recovered as if it were a fine imposed by such Court."

On a careful perusal of this section it is difficult to find any justification for the use of the words I have cited from the complaint, with respect to the alleged commission of what is called an offence which is said to be punishable under section 49. The word " offender " is certainly used, having reference to the defacing or injuring of a vehicle, as the word " defaulter " has reference to one refusing or omitting to pay his fare, but the section merely provides for reasonable satisfaction and compensation to be given, which may be recovered as if it were a fine. The word " offender " might with equal justification be used in various proceedings which are unquestionably purely civil. The word " penalty, " it is true, does appear in the marginal note to the section, but that is not to be taken as part of the Ordinance. Even if it were otherwise, it may be noted that the same word is also used in the marginal note to section 25, which appears in that part of the Ordinance (Chapter IV.) which deals with civil liabilities only. The use of the word " offences " at the head of Chapter VII., within which section 49 falls, does not alter my view of the matter.

1926.

By section 57 of the Municipal Councils Ordinance, 1910, it is provided that no appeal shall lie from any judgment or order of a Municipal Magistrate except as provided by the Criminal Procedure Code, 1898; or by any other law for the time being in force in respect of appeals from any judgment or order of a Police Court. In support of this argument that appellant has a right of appeal here, Counsel relies upon the provisions of the Criminal Procedure Code. He admits that there is no other law in force upon which he can rely for this right. The Vehicles Ordinance itself is silent on the point. Under the Criminal Procedure Code the right of appeal is governed by section 338 and its attendant sections. That right only obtains in "a criminal case or matter." The first question to be decided is whether these particular proceedings in the Municipal Court come within that class of case. If they do not, it is not necessary to consider whether obtaining the leave of the Magistrate is a condition precedent to the appeal being heard.

As I have pointed out, the Vehicles Ordinance, in addition to creating certain offences which undoubtedly are dealt with in criminal proceedings, goes on to legislate for certain civil liabilities. Further, reference to section 312 (2) of the Criminal Procedure Code and section 354 of the Civil Procedure Code shows that fines imposed by criminal and civil Courts may be recovered by the same process through the Fiscal. Counsel, however, relies upon the decision in *Silva v. Appukamy*,<sup>1</sup> which was an appeal against an order of a Police Magistrate refusing to set aside or recall a warrant to recover a payment of a sum due for hire under section 49 of the Vehicles Ordinance. The Court held that such a warrant can only issue upon the refusal or neglect of the defaulter to pay the sum after it has been awarded by the court and allowed the appeal. The question whether or not any appeal lay in such a proceeding does not appear to have been considered, but even if there was no appeal, I think that on the facts there is little doubt the learned Judge would have dealt with the matter under the revisory powers of the Court. But the judgment is certainly against the argument of Counsel that the proceedings was in any way a criminal case or matter. Schneider J. points out that "the obligation to pay hire for a vehicle taken on hire is purely civil and contractual. Nowhere is it declared to be an offence to make default in payment of such hire. Section 49 only seeks to provide a speedy means of enforcing a purely civil right. An analogous provision is to be found in the Maintenance Ordinance, 1889." This is a convenient point for noting that with regard to the analogous provision of the Maintenance Ordinance under which frequent appeals come before this Court, section 17 of that Ordinance especially gives a right of appeal to any dissatisfied

<sup>1</sup> (1926) 27 N. L. R. 215.

DALTON J.  
De Jong v.  
Kandappa

1926. party. I can find no such provision applicable to section 49 of the  
 DALTON J. Vehicles Ordinance. A comparison with English decisions also  
 De Jong v. gives assistance on this point. The following two sections appear  
 Kandappa in the Town Police Clauses Act, 1847.<sup>1</sup>—

66. " If any person refuse to pay on demand to any proprietor or driver of any hackney carriage, the fare allowed by this, or the special act, or any by-law made thereunder, such fare may, together with costs, be recovered before one Justice as a penalty."

67. " Any person using any hackney carriage plying under a licence granted by virtue of this or the Special Act who wilfully injures the same shall for every such offence be liable to a penalty not exceeding £5, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the Justices before whom the conviction takes place and shall be recovered by the same means as the penalty."

The difference in the wording of the two sections is very obvious, and they appear to have been amalgamated with modifications in section 49 of the Vehicles Ordinance. A wilful injury could doubtless be dealt with under the Penal Code.

In *Queen v. Kerswill* <sup>2</sup> a question arose as to whether cab fare was recoverable under section 66 set out above on complaint or on information, in other words by civil or criminal process. The Justices ordered the appellant, who has been brought before them charged with non-payment of a cab fare and who had obtained a rule for a writ of *certiorari* to pay the amount and a certain sum for costs. The order complained of was in form quasi-criminal, and subjected the applicant to imprisonment in default of distress in case of non-payment. Mathew J. says:—

" The section seems to me clearly to deal with a civil debt and to provide means to obtain payment of that debt when the payment of the debt has been refused on demand . . . . It is said that the last word of the section " penalty," stamps the non-payment as one of a criminal nature. The words are " as a penalty," that is, in the manner of a penalty, and the use of the word penalty does not alter the character of the debt, which is a purely civil one."

In the use of the word penalty, section 66 goes beyond the local section 49. A similar question arose in *Queen v. Master* <sup>3</sup> in

<sup>1</sup> 10 & 11 Vict. c. 89.

<sup>3</sup> L. R. 4 Q. B. 235.

<sup>2</sup> (1895) 1 Q. B. 1.

proceedings to recover a certified balance due from an overseer, on information being laid against him for non-payment. Cockburn C.J. says:—

1926.

DALTON J.

*De Jong v.  
Kandappa*

“ The statute directs that the creditor shall proceed to enforce the payment of the money if it be not paid within seven days after he has certified it to be due, and it is made recoverable in the same summary manner as penalties are recovered under the earlier Act; but these provisions do not convert the non-payment of what is merely a debt into an offence.”

Mellor J. says:—

“ I am entirely of the same opinion. The fallacy of Mr. Jelf's argument is in not distinguishing between the debt and the means of enforcing it, by the same summary proceedings as a penalty inflicted for an offence . . . . Summary proceedings for enforcing what is merely a debt must be in the nature of civil and not criminal process.”

Having regard to the provisions of section 49 I have no difficulty in arriving at the conclusion that proceedings taken to recover hire of a vehicle under that section do not fall within the words “ a criminal case or matter ” as used in section 328 of the Criminal Procedure Code. If the respondent had sought his remedy in the civil, as opposed to Municipal or Police Courts, he would presumably have commenced proceedings in the Court of Requests. Appeals from any final judgment or order of that court are governed by Ordinance No. 12 of 1895, but that of course does not assist the appellant here.

Therefore for the reasons I have given, in the absence of any other section or Ordinance giving the appellant a right of appeal, the objection taken must be upheld, and the appeal must be dismissed with costs.

*Appeal dismissed.*

