

1940

*Present : Nihill J.*

ATTORNEY-GENERAL v. JAMES SINGHO.

627—M. C. Anuradhapura, 1,328

*Motor omnibus—Charge against driver—Aiding and abetting offence of over-crowding—Liability of driver—Motor Car Ordinance, ss. 66 (3) and 89 (Cap. 156).*

The driver of a motor omnibus may be charged with aiding and abetting the commission of the offence of over-crowding, although under section 66 (3) of the Ordinance he is not himself liable for the offence.

**A** PPEAL from an acquittal by the Magistrate of Anuradhapura.

*Nihal Gunesekera, C.C., for complainant, appellant.*

No appearance for respondent.

February 28, 1940. NIHILL J.—

In this case the Attorney-General is the appellant and the appeal is against the acquittal of the accused-respondent, a motor omnibus driver, who was charged with aiding and abetting the commission of an offence under section 66 (3) of the Motor Car Ordinance (Cap. 156).

The learned Magistrate without hearing any evidence acquitted the respondent on the grounds that since by the terms of section 66 (3) he was not liable as the driver of the omnibus for the over-crowding, he could not be held liable for abetting an offence which he himself as a driver could not commit.

I do not know on what authority the Magistrate founds this proposition. Section 66 (3) makes the conductor of an omnibus, not the driver, liable as a principal for the offence of over-crowding for the good reason that the conductor is the person who is there in the omnibus for the express purpose of regulating the seating of the passengers and the collection of their fares, but if the driver with guilty knowledge of the conductor's offence chooses to abet it, he then becomes as liable as the conductor by the provisions of section 89.

The essence of section 89 is not the offence of over-crowding but the abetment of that offence and the section reflects the general principles of the law of abetment as set out in Chapter V of the Penal Code.

It is easy to think of instances where an abettor could not himself be guilty of the offence abetted. For an example, could not a minister of religion or registrar of marriages who intentionally and with guilty knowledge performed a bigamous marriage be held accountable for abetting the bigamy or a person other than a public servant who abets a public servant to receive a bribe?

I am indebted to Mr. Nihal Gunsekera for citing to me the English case of *Gough v. Rees*<sup>1</sup> which is very much in point. There it was held that the fact that section 15 of the Railway Passenger Duty Act imposes a penalty only on the "driver, conductor or guard" of an omnibus which is overloaded did not preclude the conviction of the owner for aiding and abetting under section 5 of the Summary Jurisdiction Act, 1848. That section provides that:—

"Every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender."

Now sections 89 and 90 of Cap. 156 together provide similar means for the conviction and punishment of one who abets an offence under section 66 (3). It is clear therefore that this case must be reheard since the Magistrate founded his acquittal on a wrong view of the law. His judgment is also open to objection in that he did not hear the evidence but relied on admissions. In a criminal case nothing can be taken as admitted.

I set aside the order of acquittal and remit the case back for trial on the charge framed against the respondent.

*Set aside.*

<sup>1</sup> 142 *Law Times Rep.* 424.